1978 April 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHOENICIA HOTELS LTD. AND ANOTHER

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE DISTRICT OFFICER OF LIMASSOL,
2. THE YERMASOYIA IMPROVEMENT BOARD,

Respondents.

(*Case No.* 217/77).

Administrative Law—Administrative decision—Taken contrary to law (viz. *bye-law* 181 (2) (*a*) *of the Villages* (*Administration and Improvement*) *Yermasoyia, Bye-Laws* 1963-1973) *and by a person having no competence in the matter—Void.*

Villages (*Administration and Improvement*) *Yermasoyia, Bye-laws* 1963-1973—*Overnight stay fee in hotels—No decision of respondent Board, under bye-law* 181 (2) (a) *fixing such fee—Demand of increased fee by letters from respondent Board and its Inspector—Increased fee cannot in law be recovered as there was no decision of the respondent Board fixing the fee—And the demand therefor was made by a person* (*the Inspector*) *having no competence in the matter.*

The applicants, who are the owners and occupiers of a five-star hotel, situate within the area of the respondent Board, were at all material tines paying to the Board an overnight stay fee at the rate of 50 mils per person. This payment was made by virtue of paragraph (a)* of bye-law 181 (2) of the Villages (Administration and Improvement) Yermasoyia Bye-laws, 1963. In 1965 an amended paragraph (a)** to the said

* Quoted at p. 97 *post.*

** See Not No. 193 in Suppl. No. 3 to the Official Gazette of 1.4.1965.

bye-law was introduced, which was in all respects identical to the 1963 one with the exception that it referred to "de luxe" hotels instead of "first class" hotels and to a fee of 100 mils instead of 50 mils. In spite of this amendment the fee collected remained at 50 mils per person.

Following the introduction of a new classification for hotels by the relevant legislation and their description by stars instead of classes the aforesaid paragraph (a)* was amended in 1973 by substituting "5 stars hotel" for "de luxe hotel"; and though no decision, under the said paragraph (a), was taken by the respondents, either before or after the publication of the amending 1973 bye-laws, fixing thereby the fee payable, on January 20, 1974 the Inspector of the respondent Board wrote to the applicants and asked them to collect a fee of 100 mils per person, on the basis of the 1973 amendment. The applicants refused to pay the extra fee and the respondent Board wrote to them on the 13th July, 1977 demanding an amount of £3,870.250 mils in respect of the two-year period 1974-1975.

Hence the present recourse:

Counsel for the applicants contended that the amount claimed by the Board is not payable in law, as there has not been a decision taken by the Board fixing the fee payable under the said Bye-law 181 (2) (a).

Held, (1) that Bye-law 181 (2) (a) clearly sets out the maximum amounts which can be collected by the respondent Board leaving the exact amount payable in each class of hotels to be fixed by it from time to time; and that as there has not been any decision taken by the respondent Board increasing the existing fee of 50 mils to 100 mils per person, the amount claimed cannot in law be recovered from the applicants.

(2) That neither the letter of the Inspector nor the subsequent demand can amount to a decision duly taken by the Board within the meaning of para. (a) of Bye-law 181 (2), inasmuch as the Inspector does not appear to be authorised by the relevant legislation, namely Cap. 243 or the Bye-laws made thereunder, to fix the fee payable under the said Bye-law in lieu of the Board, and it has not been claimed that the Board has delegated its power, if it can do so at all, to him.

* See Not. No. 201 in Suppl. No. 3 to the Official Gazette dated 31.8.1973.

Accordingly the decision, if any, was taken contrary to law by a person having no competence in the matter, and as such it is void and is hereby annulled.

Sub judice decision annulled.

Recourse.

Recourse against the decision of the respondents to ask applicants to pay the amount of £3,870.250 mils due as balance of fees payable in respect of every person of over ten years of age who stayed overnight or resided in applicants' hotel during the years 1974–1975.

A. Triantafyllides, for the applicants.

M. Papas for *G. Cacoyiannis*, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment: The applicants are the owners and occupiers of the five-star hotel "APOLLONIA" situate within the area of the Improvement Board of Yermasoyia, respondent 2. By letter dated the 13th July, 1977 (*Exhibit* 2) the applicants were asked under Bye-law 181 (2) (a) of the Villages (Administration and Improvement) Yermasoyia, Bye-laws 1963–1973 to pay the amount of £3,870.250 mils claimed by the respondent Board to be due to them as the balance of fees payable in respect of every person of over ten years of age that stayed overnight or resided at the aforesaid hotel during the years 1974–1975; this amount is arrived at by calculating the relevant fee for each person per night at 100 mils instead of 50 mils as it was until then paid.

In fact, the Inspector of the respondent Board by letter dated the 20th January, 1974 (*Exhibit* 1) addressed to the Manager of the said hotel, asked him to note that the amending Bye-laws with regard to the overnight stay fee in various hotels had been published in Supplement No. 3 to the official Gazette of the Republic No. 1034 of the 31st August, 1973 under Notification No. 201 and that they should collect these fees on the basis of the new Bye-Laws which were as follows:

"For five stars hotels ..... 100 mils.
For four stars hotels ..... 75 mils.
For three stars hotels ..... 50 mils.

For two stars hotels ..... 50 mils.
For one star hotels ..... 50 mils.
And for all others ..... 30 mils."

It appears, however, that the appropriate Authority had already fixed the hotel tariffs for the two-year period 1974-1975 and that made it difficult, if not impossible, according to the applicants, to charge the extra 50 mils per person which could only be done after the tariffs were changed, so the applicants arranged, so they claim, that they should pay to the respondent Board at the rate of 50 mils per person until the tariffs were changed, hence, their payment of £3,870.325 mils. Bye-law 181 in so far as relevant to the present proceedings, originally in 1963, read as follows:-

"181.-(2) In addition to the fees in paragraph (1) of this Bye-law, provided, there shall be paid-

(a) by every occupier of any premises within the improvement area, used as a first class hotel a fee as fixed by the Board from time to time but in no case exceeding 50 mils per night for every person of ever 10 years of age, staying or residing at such hotel".

In 1965 by Notification No. 193 in Supplement No. 3 to the official Gazette of the 1st April, 1965 an amendment was effected by introducing a new paragraph (a) to Bye-law 181 (2) providing that the fee payable in respect of the "de luxe hotels" could not exceed 100 mils per person per night and making also consequential amendments to the lettering of the remaining paragraphs of the said Bye-law. Inspite, however, of this amendment the fee collected remained at 50 mils per person as already stated.

The introduction of a new classification for hotels in the relevant legislation and their description by stars instead of classes, as it was until then the case, called for the amendment of the Bye-laws providing for the said fees and it was decided by the respondent Board to amend its Bye-laws at its meeting of the 6th June, 1973 (see their minutes, *Exhibit* 3) in the way set out earlier in this judgment (*Exhibit* 1).

It was conceded by learned counsel for the respondent Board that apart from this decision to amend the Bye-laws, there

was no other decision taken by the Board either before or after the publication of the amending Bye-laws on the 31st August, 1973, fixing thereby the fee payable under Bye-law 181 (2).

On the basis of this factual background the applicants have argued that the amount claimed by the Board is not payable in law, as there has not been such decision called for by the wording of para. (a) of Bye-law 181 (2), as indeed by the wording of every paragraph of that Bye-law.

This Bye-law clearly sets out the maximum amounts which can be collected by the respondent Board leaving the exact amount payable in each class of hotels to be fixed by it from time to time and as there has not been any decision taken by the respondent Board increasing the existing fee of 50 mils to 100 mils per person, in my view the amount claimed by the respondent Board cannot in law be recovered from the applicants. Neither the letter, *Exhibit* 1, nor the demand made under *Exhibit* 2 can amount to a decision duly taken by the Board within the meaning of para. (a) of Bye-law 181 (2), inasmuch as the Inspector of the respondent Board does not appear to be authorised by the relevant legislation, namely, the Villages (Administration and Improvement) Law, Cap. 243 or the Bye-law made thereunder to fix the fee payable under the said Bye-law in lieu of the Board, nor has it been claimed that the Board has delegated its power, if it can do so at all, to him.

The position being so, I have come to the conclusion that the decision, if any, was taken contrary to law by a person having no competence in the matter, and as such is void and is hereby annulled.

Once, therefore, the *sub judice* decision is annulled on this ground, the examination of the remaining grounds is superfluous and I consider it unnecessary to deal with them in this judgment.

For all the above reasons the present recourse succeeds, but in the circumstances I make no order as to costs.

Sub judice decision annulled.
No order as to costs.