

1982 June 12

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS SOLOMIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 228/80).

*Intoxicating Liquors Law, Cap. 144 (as amended by Law 26/68)—
Licence for sale of intoxicating liquors by retail—Renewal—
—Competent Authority the Municipal Council if premises within
a municipal area—Sections 4 and 5 of the Law and definition of
“Licensing Authority” in section 2 of the Law.*

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The sole issue in this recourse was whether, in view of the provisions of sections 4* and 5* of the Intoxicating Liquors Law, Cap. 144 and the definition of “Licensing Authority”** as defined by means of s.2 of Cap. 144 (as amended by Law 26/68), the District Officer of Nicosia had competence to refuse finally the application of the applicant for renewal of his licence for the sale, by retail, of intoxicating liquors at his bar in Nicosia.

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Held, that neither the District Officer nor the District Council, but, only the Municipal Council of Nicosia, had competence to refuse finally the relevant application of the applicant; that, consequently, the District Officer has exceeded the limits of his powers and has acted contrary to the provisions of Cap. 144 and the sub judge decision has to be annulled.

Sub judge decision annulled.

* Sections 4 and 5 are quoted in full at pp. 1062–1064 post.

** “Licensing Authority” is defined as being the Municipal Council if the premises in respect of which the licence is being sought are within a municipal area.

Recourse.

Recourse against the refusal of the District Officer, Nicosia, who comes under the respondent Minister, to renew applicant's licence for the sale, by retail, of intoxicating liquors at his bar in Nicosia. 5

L. N. Clerides, for the applicant.

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

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the District Officer of Nicosia, who comes under the respondent Minister of Interior, not to approve the renewal of his licence for the sale, by retail, of intoxicating liquors at his bar in Nicosia. 10

The said decision was communicated to the applicant by a letter dated 7th May 1980. 15

The undisputed facts of this case appear to be as follows:

The applicant runs a bar at Aristokyprou street in Nicosia. A licence allowing the applicant to sell at such bar intoxicating liquors, by retail, expired on 12th March 1980. 20

The applicant applied on 24th April 1980 for the renewal of his licence and received a negative reply dated 7th May 1980. In refusing him the licence the District Officer of Nicosia informed the applicant that it was not possible to approve the renewal of his licence because he had not been considered to be a fit person for the purpose in question. 25

It has been stated in the Opposition, by counsel for the respondent, that the said reply had been sent to the applicant by the District Officer in his capacity as member of the District Council provided for by section 4 of the Sale of Intoxicating Liquors Law, Cap. 144. 30

The relevant legislative provisions are sections 4 and 5 of Cap. 144, which, modified in the light of Article 188 of the Constitution, read as follows:

"4. Subject to the provisions of section 7(1)(b) of this Law no retailer's licence shall be issued by the Licensing Au- 35

thority unless the applicant furnishes such authority with a certificate granted by the District Council under the provisions of section 5 of this Law.

5 5.(1) The District Council shall hold sittings in every year on such date or dates as the District Officer may appoint for the purpose of granting certificates to persons desirous of obtaining a licence for the sale of intoxicating liquors by retail under the provisions of this Law:

10 Provided always that one such meeting shall be held in February in every year.

(2) Before granting a certificate the District Council must be satisfied that—

15 (a) the person applying for such certificate is of good character and a fit person to hold a licence for the sale of intoxicating liquors by retail; and

(b) the premises or place where such person proposes to sell intoxicating liquors by retail are suitable and fit in all respects for the sale therein of such liquors:

Provided that no such certificate shall be granted -

20 (i) when, in the opinion of the District Council, there exist already in the village or quarter of a town or village in which the person applying therefor proposes to sell intoxicating liquors by retail, premises or places licensed for the sale of such liquors sufficient for the needs and convenience of the public;

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(ii) in respect of any premises or place situated within one hundred yards of any place of worship, tekya, medresseh or turbeh enclosed in a shrine, guard house, police station or military barracks or in any village or quarter of a town or village which is inhabited exclusively by Moslems, unless the District Council is satisfied that there are special reasons justifying the grant of a certificate in respect of such premises or place;

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(iii) in respect of any premises or place having any

internal communication with any premises or place not licensed for the sale of intoxicating liquors by retail.

(3) A certificate granted by the District Council shall be in such form as may be prescribed and shall be valid up to the end of the year in which it is granted." 5

In section 2 of Cap. 144, as amended by the Sale of Intoxicating Liquors (Amendment) Law, 1968 (Law 26/68), the "Licensing Authority" is defined as being the Municipal Council, if the premises in respect of which the licence is being sought are within a municipal area. 10

The letter of the District Officer, dated 7th May 1980, which is signed by the District Officer without any indication that it was written on behalf of the District Council, cannot be regarded, in my opinion, as merely a refusal to grant to the applicant the certificate envisaged by sections 4 and 5, above, of Cap. 144. It is an outright refusal to approve the application for the renewal of the licence concerned, and, in accordance with the aforementioned definition of "Licensing Authority" in section 2 of Cap. 144, neither the District Officer nor the District Council, but, only the Municipal Council of Nicosia, had competence to refuse finally the relevant application of the applicant. Consequently, the District Officer has exceeded the limits of his powers and has acted contrary to the provisions of Cap. 144 in writing to the applicant the letter of 7th May 1980, and the sub judice decision which was communicated by such letter has to be annulled. 15
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As regards costs I have decided to make no order as to the costs of this case.

Sub judice decision annulled. 30
No order as to costs.