

1984 January 14

[PICKIS, J.]

N. THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTA PARASKEVA AND ANOTHER,

Applicants,

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THE MUNICIPAL COMMITTEE OF LIMASSOL,

Respondents

(Case No. 166/83)

Administrative Law—Recourse for annulment—Decision emanating, in the face of it, from an organ competent under the law to decide a matter, is litigable by way of recourse and may be set aside notwithstanding defects in its issue including the absence of a formal decision

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Administrative Law—Competence—Application for building permit—Decided by Municipal Engineer though it is within competence of Municipal Committee—Annulled on ground of lack of competence on the part of the Municipal Engineer to decide the matter, and usurpation of authority on his part

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Practice—Recourse for annulment—Competence of the organ that issued sub judice decision—May be heard by the Court ex proprio motu

The applicants in this recourse challenged the decision of the respondents, which was communicated to them by the Municipal Engineer, refusing their application for a building permit for the development of their property at Limassol. Before the hearing of the recourse applicants sought particulars of the decision whereupon it transpired that the respondents never took the decision outlined in the letter of the Municipal Engineer

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On the question whether the absence of any decision from the Municipal Committee denuded the recourse of litigable issues and on the merits of the recourse

Held, (1) that a decision emanating, on the face of it, from an organ competent under the law to decide a matter, is litigable by way of recourse and may be set aside notwithstanding defects in its issue, including the absence of a formal decision, but always subject to the decision outwardly appearing to have emanated from a body having authority in law to deal with the matter; that the contention that discovery of the true facts of the case has sapped the recourse of substance, is untenable because of the status of a municipal engineer in the organisation of the respondents and the power vested in the corporation to delegate its functions to nominated persons (see, inter alia, s. 3(4)(a) of Cap. 96).

(2) That once jurisdiction vests in the Court to take cognizance of the decision, the decision must necessarily be annulled on grounds of lack of competence on the part of the municipal engineer to decide the matter and, usurpation of authority on his part as well.

Held, further, that questions affecting the competence of the organ who issued the decision, are of capital importance in revisional proceedings, and may even be heeded by the Court ex proprio motu in the absence of a submission to that end (see, inter alia, Decision of the Greek Council of State in 643/68).

Sub judice decision annulled.

Cases referred to:

Antoniades and Others v. Municipality of Paphos (1982) 3 C.L.R. 848;

Decisions of the Greek Council of State in Cases Nos.: 252/63, 2223/63, 1497/70 and 643/68.

Recourse.

Recourse against the refusal of the respondents to grant applicants a building permit for the development of their property at Ayios Georghios Quarter, Limassol.

E. Lemonaris, for the applicants.

Y. Potamitis, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants challenge a decision of the respondents, the Municipal Committee of Limassol, communicated to them by the engineer of the Municipality on their behalf on 3.2.83, refusing their application for a building permit for the development of their property at Ay. Georghios Quarter, Limassol. According to the terms of the letter, permission was refused in order to facilitate the implementation of a contemplated road construction scheme affecting Syggrou Avenue at Limassol. 5

In the reasons elicited in support of the application, it was contended the decision of the respondents was bad and ought to be set aside because it contravened their rights under Article 23 of the Constitution, it was taken in excess of the powers vested in them by law and, lastly, it violated the provisions of sections 3 and 9 of the Streets and Buildings Law, Cap. 96. 10 15

In their opposition the respondents vouched for the validity of the decision justified by the planned road works in connection with the aforementioned avenue. Before the hearing of the recourse applicants sought particulars of the decision and an opportunity to inspect it. Whereupon it transpired, as counsel for the respondents acknowledged in a letter addressed to the advocate of applicants on 28.11.83, that the respondents never took the decision outlined in the letter of their engineer. Hence the case took a different complexion from the one adumbrated in the pleadings of the parties. 20 25

Faced with the true circumstances of the case, counsel for the applicants submitted the decision must be annulled on grounds of lack of competence. In support, he cited the decision of Demetriades, J., in *Antoniades And Others v. M'ty of Paphos* (1982) 3 C.L.R. 848. For the respondents it was submitted that the recourse must be dismissed, albeit with costs in favour of applicants, in the absence of any decision issuing from the Municipality, affecting the application for a building permit, an absence that denuded the recourse of litigable issues. 30

On a review of the pertinent principles of administrative law, it appears that a decision emanating, on the face of it, from an organ competent under the law to decide a matter, is litigable by way of recourse and may be set aside notwithstanding defects in its issue, including the absence of a formal decision; but 35

always subject to the decision outwardly appearing to have emanated from a body having authority in law to deal with the matter. A series of decisions of the Greek Council of State, affirm the soundness of the above propositions in law (see, inter alia, Decisions in 252/63, 2223/63 and 1497/70). Only where
5 lack of competence is markedly prominent, manifest one might say, should the Court conclude that no cognizable decision has come into being - *Conclusions from the Greek Council of State 1929-59*, p.266.

10 On consideration of the facts of the case, the contention that discovery of the true facts of the case has sapped the recourse of substance, is untenable because of the status of a municipal engineer in the organisation of the respondents and the power
15 vested in the corporation to delegate its functions to nominated persons (see, inter alia, s.3(4)(a) - Cap.96). The absence of any reply, whatever, to the application for a permit, subsequent to the letter of the municipal engineer, makes it all the more imperative to review a decision purporting to emanate from the Municipality of Limassol and communicated by an official to
20 whom the respondents could, in the ordinary course of events, entrust authority to communicate their decision.

Once jurisdiction vests in the Court to take cognizance of the decision, the decision must necessarily be annulled on grounds of lack of competence on the part of the municipal engineer to
25 decide the matter and, usurpation of authority on his part as well. Questions affecting the competence of the organ who issued the decision, are of capital importance in revisional proceedings, and may even be heeded by the Court ex proprio motu in the absence of a submission to that end (see, inter alia, Decision of the Greek Council of State in 643/68).
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In the result the recourse succeeds. The decision is set aside. The respondents are adjudged to pay the costs of the applicants. Order it terms.

35 *Sub judice decision annulled. Respondents to pay applicants' costs.*