1985 June 18

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ORICTACO CO. LTD. AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMERCE
AND INDUSTRY
2. THE SENIOR MINES OFFICER,

Respondents.

(Cases Nos. 23/78, 24/78, 25/78, 26/78, 27/78 and 28/78).

Administrative Law— Administrative acts or decisions—Reasoning—Not necessary that each factor taken into consideration and weighed by the administration should be mentioned in the reasoning of the decision—Reasoning of sub judice decision may appear, unless the Law expressly demands it, not only in its text but can be deduced and be supplemented from the material in the file—There is complete and sufficient reasoning when all factors capable of influencing the mind of the administrative organ in the exercise of its discretion were placed before it and there is nothing to suggest that such factors were not duly taken into consideration—All material being before the respondents, in the absence of proof to the contrary, it has to be accepted on the presumption of regularity that same was taken into consideration.

Mines and Quarries Regulation Law, Cap. 270—Quarry licences —Right to—To be examined in the light of the provisions of Article 23 of the Constitution—Grant of quarry licences a matter of discretion which has to be exercised properly in the public interest—Respondents properly exercised their discretion to refuse granting of quarry licences to

the applicants on the ground that they were already the holders of a great number of such licences.

The respondents refused applicants' application for the grant to them of quarry licences for the quarrying of Umber and Bentonite on the ground that they were already the holders of a great number of such quarry licences; and hence these recourses. Counsel for the applicants mainly contended:

(a) that the reasoning contained in the sub judice decision is not a legally valid one and not consonant or born out by the Mines and Quarries Regulation Law, Cap. 270.

(b) that the applicants were entitled to the quarrying licences applied for independently of the fact that they already possessed other such licences as nowhere in the Law Cap. 270, there exists any limitation as to the number of licences which one may obtain.

Held, (1) that it is not necessary that each factor taken into consideration and weighed by the administration should be mentioned in the reasoning of the decision; that the reasoning of a sub judice decision may appear, unless the Law expressly demands it, not only in its text but can be deduced and be supplemented from the material in the file and there is a complete and sufficient reasoning when all factors capable of influencing the mind of the administrative organ in the exercise of its discretion were placed before it and there is nothing to suggest that such factors were not duly taken into consideration; that, no doubt, all this material was before the Minister and unless there was proof to the contrary—and there was none—it has to be accepted on the presumption of regularity that same was taken into consideration by the respondent Minister in reaching the sub judice decisions; and that, therefore, there was complete reasoning of the sub judice decision.

(2) That the number of quarry licences which one may obtain has to be examined in the light of the provisions of Article 23 of the Constitution whereby the right of the Republic to minerals is expressly reserved and the provisions of the Mines and Quarries Regulation Law and the purpose it was intended to serve; that as it appears from

its provisions viewed as a whole, the grant of a quarrying licence is a matter of discretion which has to be exercised properly; that it cannot but be noticed that the purpose of the Law viewed in the right perspective is that such licences have to be given for the exploitation of the mineral wealth of the country in the public interest, that is the interest of the economy of the State; and that, consequently, the administration can in the proper exercise of its discretion refuse a permit for a quarrying licence if any applicant is considered as not being in a position to develop and exploit fully the mineral wealth which exists in an area covered by the licence applied for; and that, accordingly, the recourses must fail.

Applications dismissed.

Cases referred to:

Mouzouris v. *Republic* (1972) 3 C.L.R. 43;

Vassiliou v. *Republic* (1982) 3 C.L.R. 220;

Republic v. *Ekkeshis* (1975) 3 C.L.R. 548;

Republic v. *Droushiotis* (1967) 3 C.L.R. 232;

Droushiotis v. *Republic* (1966) 3 C.L.R. 722.

Recourses.

Recourses against the refusal of the respondents to grant applicants a quarry licence for the quarrying of umber and bentonite.

L. Papaphilippou with *C. Gavrielides* for the applicants.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. Loizou J. read the following judgment. These six recourses have been heard together by direction of the Court as they present common questions of law and fact. The prayer for relief in each one of them is for a declaration that the act or decision of the respondents not to grant a quarry licence in response to their respective appli-

cation for the quarrying of Umber and Bentonite is null and void and with no effect and that what was omitted ought to be done.

In each recourse the application in question was refused and the relevant decision was communicated to the applicant Company by letter in which the ground of such refusal was stated to be that the applicant Company was already the holder of a great number of such quarry licences. In respect of the areas, subject of the several applications, the applicant Company had prospecting permits and they had been informed by the respondents that on principle they did not intend to renew same unless sufficient material was produced to persuade them that the prospecting work in the areas had not been completed. The applicant Company was also asked to inform the respondents about their future plans for prospecting in the area and it was further stated in the said letters that as it had also orally been explained to them it was time to submit applications for quarry licences and abandon their prospecting permits as the purpose of such permits is to carry out prospecting and then submit applications for a quarry licence so that one shall be entitled to extract quarrying material. It was in view of these warnings given by the respondents that the applicant Company submitted the applications for quarry licences the answer to which forms the subject matter of the present recourses.

In the oppositions filed on behalf of the respondents which are identical in all recourses it is claimed that the sub judice decisions were lawfully taken and after proper exercise of the administrative discretion by the respondent Minister.

The relevant facts are set out therein and attached thereto are all documents and correspondence that the respondents had before them in reaching the sub judice decisions. It would add nothing to this judgment to reproduce them here verbatim. Suffice it to say, however, that on this subject of quarrying there have also been decisions of the Council of Ministers as regards questions of policy which had to be changed on account of the Turkish invasion and the fact that the Cyprus Mines Corporation stopped its

operations because of the occupation by Turkish troops of their mining areas.

A brief reference to the factual background of the case which is essential for the determination of the issues raised in these recourses will shortly be made. But before, however, doing so I feel compelled to point out the course of events that took place from the filing of these recourses to the 19th April 1985 when judgment was reserved. The cases came up for directions on the 30th March, 1978 when by consent of the parties it was directed that they should be heard together and they were adjourned for hearing on the 22nd September 1978. On that date on the application of the applicant Company and with the consent of the respondents directions as to written addresses were made. For reasons appearing in the record the written address on behalf of the applicant company was filed on the 13th January, 1979, and the time for the filing of the written address of the respondents was extended accordingly. On the 15th June, 1979, the time for the filing of the written address of the respondents was extended to 40 days and ultimately on the 10th November, 1979, the address in reply was filed.

On the 12th June, 1979, the case was adjourned to the 7th February 1980, for oral clarifications and evidence, if any, when an adjournment was applied on behalf of the applicant Company as their clients had been away and they could not prepare the affidavits for which direction had been given by the Court.

On the 7th February 1980, the Court was informed that neither side was able to file the respective affidavit and the case was adjourned sine die for compliance with the direction regarding the filing of affidavits and that upon completion of these procedural steps the case to be fixed for oral clarifications and cross-examination of the affiants if notice to that effect was given.

The affidavit of the applicant Company was filed on the 12th March, 1980. No further step was taken by either side and the case remained pending awaiting apparently the filing of the affidavit of the respondents in reply, when these recourses were fixed for directions by the

Court ex proprio motu on the 8th December, 1984, on which date at the request of both sides the cases were adjourned to the 22nd February 1985, for mention. On that date counsel for the applicant Company informed the Court that his clients intended to proceed with the hearing of these cases and so they were fixed for oral clarifications on the 19th April, 1985 with a direction that the affidavit on behalf of the respondents should be filed within one month.

In fact the said affidavit was filed on the 19th April, 1985, and the hearing was thereupon concluded as the parties wished neither the affiants for cross-examination nor they wished to add any oral clarifications to their written addresses.

The first ground relied upon in this recourse by the applicant Company is that the reasoning contained in the sub judice decision is not a legally valid one and not consonant or born out by the Mines or Quarries Law, Cap. 270. Moreover it was urged that the reasoning contained in the letter of the respondents communicating to the applicant Company the sub judice decisions, namely that the issue of a quarry licence was refused on the ground that they were already the holders of a big number of such licences, is different from the reasoning given in the opposition to the application.

A perusal of all the relevant documents and material that was before the respondent Minister when he took the sub judice decision shows that there was complete reasoning to the effect that the applicant Company was the holder of a big number of quarry licences but they carried out quarrying on such a limited scale that the applicant Company was informed by letter dated 6th September 1977, exhibit 9, that it would soon be notified that the quarrying licences for Bentonite would be cancelled within six months if no quarrying works were carried out.

Needless to say that it is not necessary that each factor taken into consideration and weighed by the administration should be mentioned in the reasoning of the decision. The reasoning of a sub judice decision may appear, unless the law expressly demands it, not only in its text

but can be deduced and be supplemented from the material in the file and there is a complete and sufficient reasoning when all factors capable of influencing the mind of the administrative organ in the exercise of its discretion were placed before it and there is nothing to suggest that such factors were not duly taken into consideration. (See *Mouzouris* v. *The Republic* (1972) 3 C.L.R. 43; and *Conclusions from the Case Law of the Greek Council of State* 1929-1959 p. 185, and *Vassiliou* v. *The Republic* (1982) 3 C.L.R. 220.)

No doubt all this material was before the Minister and unless there was proof to the contrary,—and there was none,—it has to be accepted on the presumption of regularity that same was taken into consideration by the respondent Minister in reaching the sub judice decisions (See *The Republic* v. *Ekkeshis* (1975) 3 C.L.R. 548).

The second ground relied upon is that the respondent Minister acted under a misconception of fact inasmuch as in the submission of the Director-General to the respondent Minister dated 11th October, 1977, the Senior Mines Officer, is as alleged, wrongly presented as holding the view that there was no justification to grant other quarrying licences to the applicant Company in view of its being already the holder of a big number of such licences whereas in fact he held the opposite view. An examination of the relevant documents does not bear out this contention. On the contrary the views of the Senior Mines Officer were correctly presented. Another ground of misconception of facts is based on the allegation that the respondent Minister omitted to examine the output of the applicant Company under the quarrying licences they held and that in fact they did not hold such a big number of quarrying licences. To my mind these questions are related to the capacity of the applicant Company including its financial condition and the matter was, obviously properly and in its correct factual context, examined by the respondents as it emanates from the contents of the relevant correspondence attached to in the opposition.

Finally, the allegation put forward that the applicant Company was entitled to the quarrying licences applied for independently of the fact that it already possessed other

such licences as nowhere in Law Cap. 270, there exists any limitation as to the number of licences which one may obtain, has to be examined in the light of the provisions of Article 23 of the Constitution whereby the right of the Republic to minerals is expressly reserved and the provisions of the Mines and Quarries Law and the purpose it was intended to serve. As it appears from its provisions viewed as a whole the grant of a quarrying licence is a matter of discretion which, as explained by the Full Bench of this Court in the case of *The Republic* v. *Yiangos Drousiotis* (1967) 3 C.L.R. 232 affirming the first instance judgment reported as *Drousiotis* v. *The Republic* (1966) 3 C.L.R. 722, has to be exercised properly.

It cannot but be noticed that the purpose of the Law viewed in the right perspective is that such licences have to be given for the exploitation of the mineral wealth of the country in the public interest, that is the interest of the economy of the State. Consequently the administration can in the proper exercise of its discretion refuse a permit for a quarrying licence if any applicant is considered as not being in a position to develop and exploit fully the mineral wealth which exists in an area covered by the licence applied for.

For all the above reasons the recourses are dismissed but in the circumstances there will be no order as to costs.

Recourses dismissed.
No order as to costs.