

1985 April 26

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PETROS MATSOUKA (No. 2).

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,
2. DISTRICT OFFICER OF LARNACA, AS CHAIRMAN OF THE COMMITTEE FOR THE ADMINISTRATION OF TURKISH-OWNED PROPERTIES,
3. COMMITTEE FOR THE ADMINISTRATION OF TURKISH-OWNED LAND OF PETROFANI,

Respondents.

(Case No. 247/82).

Tenders—Acceptance of tender which was filed out of time and after the other tenders had already been opened—And rejection of applicant's tender which was valid—Respondents acted in abuse of powers and in flagrant violation of the principles of good administration.

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The respondents invited tenders for the disposition of stems of cereals. Such tenders had to be submitted in a sealed envelope the latest by the 21st May, 1982. Two tenders one from applicant for £3,150 and one from a certain Michael Halouvas for £2,300 were submitted within the above time-limit. At the meeting of the respondents of the 22nd May, 1982 which was convened for the purpose of considering the tenders, the interested parties—the Cow Breeders Association of Athienou—came and filed a tender for £2,000. The respondents decided by majority that the tender of the interested parties for £2,000 be accepted. At a subsequent time the sum of £2,000 was crossed out and was substituted by a sum for £3,150.

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Upon a recourse by the applicant:

Held, that at the meeting of the 22nd May, that is after the expiration of the period fixed for submitting tenders, no valid tender had been submitted by the interested parties; that, therefore, any tender on their part was out of time and not made in the proper way, that is, in a sealed envelope to be opened at the same time with the other tenders and not after the other tenders had already been opened; that in rejecting the tender of the applicant and accepting an invalid tender from the interested parties respondents have acted in abuse of powers and in flagrant violation of the principles of good administration; and that, accordingly, the sub judice decision must be annulled.

Sub judice decision annulled.

Cases referred to:

Matsoukas v. Republic (1984) 3 C.L.R. 1443.

Recourse.

Recourse against the decision of the respondents to accept the tenders of the interested party for the disposal of the stems of cereals left in the agricultural land left by Turks who abandoned their properties in the area of Athienou—Petrofani—Louroutzina.

Ph. Valiantis, for the applicant.

Chr. Ioannides, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicant is a merchant of Athienou village. Respondent 3 is a communal Committee appointed by the Government to administer properties belonging to Turks, who, as a result of the Turkish invasion, were forced by their leaders to move to the Turkish occupied areas and abandoned their properties, which were situated within the area controlled by the Republic of Cyprus. The agricultural land of Turks in the areas of Athienou—Petrofani—Louroutzina was left by such Committee to the Co-operative Society of Athienou for the cultivation of cereals, in 1981. After the harvesting of such cereals respondent 3 invited tenders for the disposition of

the stems of cereals which were left in the said properties after the harvest. Such tenders had to be submitted in a sealed envelope to the secretary of the Co-operative Society of Athienou the latest by the 21st May, 1981. According to the facts, as alleged by the respondents, respondent 3 received three tenders, one from the applicant for C£3,150.-, one from Michael Halouvas or Zavros for C£2,300.- and one from the Cow Breeders Association of Athienou village (Syndesmos Agelathotrofon Athienou) for C£3,150.-. As alleged by respondent 3, the tender of the applicant and that of the Cow-Breeders Association were submitted on 20.5.1982. Copies of such tenders have been annexed as exhibits to the opposition of the respondents. Out of such tenders, respondent 3 accepted that of the Cow Breeders of Athienou and rejected applicant's tender and that of Michael Halouvas. As a result, applicant filed the present recourse challenging such decision.

It is the contention of the applicant that the Cow-Breeders of Athienou did not submit a valid tender and that the only valid tenders submitted in time were those of the applicant and Halouvas and that he was assured by both respondents 2 and 3 that his tender was the highest and was to be accepted.

Applicant advanced the following grounds of Law in support of his recourse:

- (1) The respondents acted in violation of the principles of good administration and/or in apparent misconception of facts and/or in abuse and/or excess of power, in that:
 - (a) They ignored the fact and/or they acted in contravention of the conditions on the basis of which they asked for tenders for the disposition of the stems of 4,400 donums of land, which conditions did not allow them to dispose of the said stems to persons who did not submit tenders in sealed envelopes.
 - (b) They ignored the fact and/or they acted in contravention of the terms on the basis of which they invited tenders which did not give them the

option to refuse to accept the highest tender.

- (c) They ignored the fact that the tender of the applicant was the highest.
 - (d) They ignored the fact that the Cow-Breeders Association of Athienou did not submit a tender in time or at all.
 - (e) They ignored the original statement by the Cow-Breeders Association of Athienou that they were not interested to buy the said stems.
 - (f) They ignored the agreement between them and the said Association by virtue of which they gave to the said Association other consideration for its non-participation in the said tenders.
 - (g) They contravened their assurances to the applicant that his tender was to be accepted as being the highest one made within the prescribed period.
- (2) The sub judice decision is devoid of any legal or any reasoning.

The application was opposed by the respondents who contended that the sub judice act and/or decision was lawfully taken in accordance with the provisions of the Constitution and the Law and after all relevant facts were taken into consideration and denied that they acted in abuse and/or in excess of powers.

The Cow Breeders Association of Athienou, though duly served with a copy of the application as interested parties, elected not to participate in these proceedings.

At an earlier stage in these proceedings I dealt with a preliminary objection raised by counsel for respondents that the sub judice act and/or decision does not fall within the domain of public Law, which I rejected and in my ruling I concluded that bearing in mind the functions and status of respondent 3, the sub judice decision of respondent 3 is an administrative decision within the domain of public Law and as such amenable by a recourse (see *Petros Matsoukas v. The Republic of Cyprus etc.* delivered

on 20th December, 1984, reported in (1984) 3 C.L.R. 1443).

Applicant testified on oath and he called also one of the member of the respondent 3 Committee, namely Photis Kyriacou to give evidence pertaining to the circumstances of this case. According to the evidence of the applicant, after the publication of the invitation for tenders, he submitted his tender for £3,150.- on the 20th May, 1982. The last date for the filing of such tenders was the 21st May, 1982. After the opening of the tenders by the Committee he was informed by two members of the Committee that there were only two tenders, one coming from him which was the highest and which was to be accepted, and the other coming from Michael Halouvas for £2,300.- To his surprise the stems of the cereals were offered by respondent 3 to the Cow Breeders Association which had not submitted an offer in time and in the prescribed manner. The evidence of Photis Kyriacou Yianni, who at the material time was a member of respondent 3 Committee, corroborates fully the allegations of the applicant. According to his evidence, after the last date for submitting tenders had expired, the Committee met and considered the tenders which were before it. Only two tenders had been submitted, one coming from the applicant and the other one from Halouvas. Some members of the Committee expressed the view that instead of accepting the tender of the applicant, they should inform the Cow Breeders Association to appear before the Committee and inform the Committee whether they were also interested to submit a tender. Both he and another member of the Committee objected to such proposal and insisted that they should act in accordance with the conditions set out in the publication for tenders and accept the highest tender submitted.

After hearing the evidence of these two witnesses the case was adjourned for further evidence and clarifications, when counsel for applicant, instead of calling further evidence, sought to put in as evidence, a document from the file of the administration, embodying the minutes of the meeting of the 22nd May, 1982, when respondent 3 met to consider the tenders submitted. Counsel for respondents did not object to the production of such document. Such

document dated the 24th May, 1982, is a letter to the District Officer of Larnaca, as Chairman of the Committee for the administration of the Turkish-owned properties. The contents of such letter read as follows:

5 “The local Committee for the preservation and administration of Turkish-owned land at Petrofani village at its meeting of the 22nd May, 1982, decided as follows:

(1)

10 (2) The following tenders for the stems of cereals have been received:

(a) Petros Matsouka, £3,150.-.

(b) Michael Halouvas, £2,300; also at the meeting, representatives of the Cow Breeders Association came and filed a tender for £2,000.-.

15 It was decided by majority of the members of the Committee that the tender of the Cow-Breeders of Athienou for £2,000.- be accepted. Messrs. Christos Zea and Photios Yianni, disagreed.

20 It should be noted that at the meeting the representative of PEK Mr. Skourou and the representative of the Government, were absent. Therefore, you are asked for the summoning of another meeting of all members of the Committee the soonest possible, to confirm or re-examine the above decision.

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(Sgd.) The Mayor,

The Chairman of the Village Commission,
The Secretary of the Co-operative Society of Athienou.”

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35 What emanates from such letter is that at the meeting of the 22nd May, that is after the expiration of the period fixed for submitting tenders, no valid tender had been submitted by the Cow-Breeders Association of Athienou. Therefore, any tender on their part was out of time and

not made in the proper way, that is, in a sealed envelope to be opened at the same time with other tenders and not after the other tenders had already been opened. Such tender, was for the sum of £2,000.-. For reasons unknown and which respondents 3 did not attempt to explain, such tender was at a subsequent time altered in such a way, that the sum of £2,000.- was crossed out and this is apparent on exhibit 2 which is a photocopy of the original tender, and was substituted by a sum of £3,150.-.

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Counsel for the respondents after the production of such document, very rightly, stated that he withdrew his objection to the allegations of the applicant that the tender of the Cow-Breeders Association of Athienou was out of time and that it should not have been accepted. Counsel added, that due to the fact that this is an administrative recourse, he could not submit to judgment by consent and left the matter to the Court.

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Having considered the evidence before me and in particular the contents of the letter of the 24th May, 1982, I have not the slightest hesitation in coming to the conclusion that respondent 3 in rejecting the tender of the applicant and accepting an invalid tender from the Cow-Breeders Association of Athienou has acted in abuse of powers and in flagrant violation of the principles of good administration. I consider the conduct of those members of the Committee who by majority took the sub judice decision in this case, as lamentable, bearing in mind the way the decision was taken as it appears in the letter of the 24th May, 1982, signed by the Mayor, the Chairman of the Village Commission and the Secretary of the Co-operative Society. Another factor indicating the impropriety of their conduct, is the fact that although the tender which, according to the letter of the 24th May, 1982 was submitted by the Cow-Breeders Association in the course of the meeting for £2,000.- and was in the hands of respondent 3 Committee, it came later to be altered in such a way, as the sum indicated therein be crossed and substituted by a sum of £3,150.- to correspond with that of the tender of the applicant.

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In the result, I find that this recourse succeeds and the sub judice decision is annulled.

Respondents 3 to pay to the applicant £100.- against costs in this case.

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*Sub judice decision
annulled. Respondent 3 to
pay £100.- costs.*