

1986 February 14

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

A. TRIKOMITIS LIMITED,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND OTHERS,

Respondents.

(Case No. 477/84).

Tenders—The discretion of the Ministerial Committee assigned responsibility for the award of tenders, though wide, is not absolute—The relevant reasoning is subject to judicial review—It is the duty of the Committee to select the tender most advantageous to the public—The price is not the only factor—Quality and durability are just as important. 5

In response to an invitation for tenders dated 15.9.83 for the supply to the Government of vehicles and truck mounted equipment the applicants and the interested parties submitted tenders. Notwithstanding that the three separate bodies which evaluated the tenders, namely the Electrical and Mechanical Services Department, the Technical Committee and the tender Board recommended the adoption of the applicants' tender, as the most advantageous to the Government, the Ministerial Committee, assigned responsibility for the award of tenders, awarded the tender to the interested parties. 10 15

The reasoning of the said award can best be surmised from a statement in the relevant minutes that the Ministers insisted on the implementation of a decision to grant 15% preference to the interested parties, as sole 20

home manufacturers of vehicles. Presumably they were referring to a policy decision of the Committee dated 24.4.84. There is no guidance as to how such preference will apply in practice and how tenders should be adjusted in order to reflect the preference.

It should be noted that according to the Tender Board the tender of the applicants was lower than either tender of the interested parties even after making allowance for the 15% preference.

Held, annulling the sub judice decision: (1) The discretion of the Committee, though wide, is not absolute. The reasoning of an award is subject to judicial review. It is their duty to select the tender most advantageous to the public. The price is not the only factor. Quality and durability are just as important.

(2) In this case the Ministerial Committee failed to give any reasons for disregarding the recommendations of the experts, i.e. the first two of the said three bodies, or the recommendations of the Tender Board, notwithstanding inclusion of the 15% preference in the latter's calculations. The Committee, also, failed to attach any importance to the fact that part of the equipment to be supplied by applicants would be locally manufactured. In the light of the material before the Committee, the preference of 15% was not on its own a sufficient reason for the sub judice award.

(3) The inescapable inference is that the Committee failed to address themselves to the proper issue, namely the selection of the tender most advantageous to the public. It follows that the sub judice award has to be annulled for defective exercise of discretionary power.

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

Cases referred to:

Silvestros and Kitromilides v. The Republic (1983) 3 C.L.R. 1404.

Recourse.

Recourse against the decision of the respondents to award the tender for the supply of two tipper lorries to K.M.C. Motors Ltd.

G Triantafyllides, for the applicants. 5

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

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants, importers of motor vehicles, seek the review of the decision of the respondents to award the tender for the supply of two tipper lorries to K.M.C. Motors Ltd., the interested parties.⁽¹⁾ The decision was taken by a Ministerial Committee assigned responsibility for the award of tenders invited on 15th September, 1983, for the supply of vehicles and truck mounted equipment⁽²⁾. Apparently the decision was taken on 5th June, 1984⁽³⁾ and formally communicated on 2nd July, 1984⁽⁴⁾. It is challenged as arbitrary and wholly unreasoned. The tenders submitted in response to the above invitation were screened and evaluated by three separate bodies before they were referred to the Ministerial Committee for decision. They were examined first by the Electrical and Mechanical Services Department⁽⁵⁾, then by the Technical Committee⁽⁶⁾ and lastly by the Tender Board⁽⁷⁾. They unanimously recommended, for the reasons indicated in their respective reports, the adoption of the tender of the applicants as the most advantageous to Government.

The case for the applicants is that the respondents arbitrarily rejected the tender of the applicants, a fact evidenced inter alia from the absence of any reasons justifying depar-

⁽¹⁾ The interested parties, though served with copy of the application, showed no interest in the proceedings

⁽²⁾ See Tender No 82/83, Appendix «A» to the Opposition

⁽³⁾ See Appendix «Γ» to the Opposition

⁽⁴⁾ See Appendix «Ι» to the Opposition

⁽⁵⁾ See Appendix «Ε» to the Opposition.

⁽⁶⁾ See Appendix «ΣΤ» to the Opposition.

⁽⁷⁾ See Appendix «Φ» to the Opposition

ture from the recommendations of the above three bodies or indication of any convincing reasons for their decision. Respondents claim, as argued by counsel on their behalf, that the decision was within their discretion, to the limits of which they kept in reaching it.

The reasons given by the Ministerial Committee for their decision are not at all clear⁽¹⁾. They can at best be surmised from the laconic statement recorded in the minutes that the Ministers insisted on the implementation of a decision to grant 15% preference to interested parties, as the sole home manufacturers of motor vehicles. Presumably they were referring to a decision of the Ministerial Committee of tenders of 24th April, 1984,⁽²⁾ that 15% preferential treatment should be given to the tenders of interested parties on the ground that they were the only recognized Cyprus manufacturers of motor vehicles. Neither in the policy decision of 24th April, 1984, nor in the particular decision here under review is there any guidance on the application in practice of the 15% preference and how tenders should be adjusted in order to reflect the preference.

The tender of the applicants in this case was, in money terms, lower than either of the two tenders of the interested parties. Moreover, according to the Tender Board, the tender of the applicants was in real terms lower than either of the two tenders of the interested parties even after making appropriate allowance for the 15% preference. They hinted, rightly in my view, that tenders should not be evaluated solely by reference to the price factor. The price should be related to the quality and advantages of the equipment to be supplied. There could be no comparison, they observed, between unequal things; a position wholly consonant with the duty of the Administration to treat all citizens in the same position in a spirit of effective equality⁽³⁾.

It is the duty of a Tender Board to select the tender most advantageous to the public. The evaluation of rival tenders

⁽¹⁾ Decision of 5th June, 1984, set out in Appendix «Θ»

⁽²⁾ See Appendix «Γ» to the Opposition.

⁽³⁾ *Silvestros and Kitromilides v. Republic* (1983) 3 C.L.R. 1404, 1408.

is a composite process, extending to every aspect of a tender that reveals comparative advantages and disadvantages. The price is an important factor but not the only factor. Quality and durability are just as important. The price is decisive when all other things are equal. While wide discretion resides with the Tender Committee to make an evaluation of the tenders, their discretion is not absolute. They cannot award the tender to anyone they please. Their reasons for the award of a tender are subject to judicial review. The sub judge decision cannot stand the test of this scrutiny. No explanation is given for disregarding the recommendations of the experts, the first two committees, or the recommendation of the Tender Board itself, notwithstanding inclusion in their calculations of the 15% preference. To me it appears they chose the tender of the interested parties without proper regard to the intrinsic merits of rival tenders. Nor apparently did they attach, it seems, any importance to the fact that part of the equipment to be supplied by the applicants would be locally manufactured (the applicants are not challenging in these proceedings the validity of the decision of 24th April, 1984, for preferential treatment of tenders of the applicants). The preference of 15% was not, in the light of the material before the Ministerial Committee, on its own a sufficient reason for the preference of the tender of the interested parties. The reason given for the decision did not of itself justify it. As explained, the decision was taken by reference to only one factor, the 15% preference, not decisive in itself. Moreover, the decision cannot be reconciled with the facts before the Ministerial Committee and stands in contradiction thereto. The inescapable inference is that the respondents failed to address themselves to the proper issue before them, namely, to select the tender most advantageous to the public in the light of all relevant considerations. For that reason it must be annulled for defective exercise of their discretionary powers.

The sub judge decision is annulled. Let there be no order as to costs.

*Sub judge decision annulled.
No order as to costs.*