

1986 April 30

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PANAYIOTIS PAPANAYIOTOU,

*Applicant,*

v.

1. THE CYPRUS TOURISM ORGANIZATION,
2. THE MINISTER OF COMMERCE AND INDUSTRY,

*Respondents.*

(Case No. 115/85).

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*The Tourist Places of Entertainment Law 91/79\*—Sections 2(d), 4 and 10(1)—Tourist places of entertainment—Decision to nominate a shop as such—Should be taken by the Cyprus Tourism Organisation with the approval of the Minister of Commerce and Industry (s. 2(d))—Once a place has been so nominated, it is the task of the Administrative Board of C.T.O. to classify it under s. 4—The Minister has nothing to do with the second decision—A hierarchical recourse to the Minister lies under s. 10(1) against a decision taken under s. 4, but not against a decision taken under s. 2(d).*

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*Natural justice—No man shall be a Judge in his own cause.*

By a decision dated 20.1.84 respondents 1 classified the shop of the applicant as a "tavern" as from 1.3.84 and included the said shop in a list of 86 new tourist places of entertainment, which was submitted to the Minister of Commerce and Industry (respondent 2) for his approval, which was in fact given.

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On the 12.7.84 the relevant notice of the said decision was delivered to the applicant. The notice contained also

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\* Repealed by Law 29/85, which, however, does not apply in the present case.

information in respect of applicant's right to file a hierarchical recourse to the Minister against such decision.

5 The applicant did in fact file such a recourse to the Minister. The recourse was dismissed and as a result the applicant filed the present recourse, whereby he prays for declarations that the classification of his shop as a tourist place of entertainment (Category Tavern), the decision of respondent 2 to approve the decision or decisions of respondent 1 and the decision of respondent 2 dismissing the hierarchical recourse are null and void and of no legal effect.

15 *Held*, annulling the sub judice decisions: (1) As it emanates from the provisions of sections 2(d), 4 and 10(1)\* of Law 91/79 the Cyprus Tourism Organisation with the approval of the Minister may include in the list of tourist places of entertainment a particular place by its name. After such approval is obtained, it is the task of the Administrative Board of C.T.O. to classify such a place under s. 4 in one of the categories listed in that section. The Minister has nothing to do with such classification. A hierarchical recourse lies only against such classification under s. 4, but not against a decision for the nomination of a place as a tourist place of entertainment, which under s. 2(d) requires the prior approval of the Minister.

25 (2) What happened in this case is that the Board of C.T.O. first classified the shop in the category of a tavern and then obtained the approval of the Minister. There is no separate decision for the nomination of the shop as a "tourist place of entertainment". The notice to the applicant referred to his right of a recourse against the "afore-said decisions" which obviously included both a decision under s. 2(d) and a decision under s. 4. From the material before the Court it is obvious that applicant's hierarchical recourse was treated as being one under section 2(d).

35 (3) A situation has thus arisen where the Minister, who had approved both the nomination of the shop as a "Tourist Place of Entertainment" and its classification as a

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\* These sections are quoted at pp. 795-797 post.

tavern, came to review his own decision contrary to the rule of natural justice that no man will be a Judge in his own cause.

(4) It follows that the sub judice decision was taken under a misconception of law and under a procedure not provided by law. 5

*Sub judice decision annulled.  
£50.- costs in favour of applicant.*

**Recourse.**

Recourse against the decision of respondent No. 1 whereby applicant's shop was classified as a tourist place of entertainment (category "tavern"). 10

*A. S. Angelides*, for the applicant.

*N. Charalambous*, Senior Counsel of the Republic, for the respondents. 15

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. By this recourse which is directed against the Cyprus Tourism Organization (C.T.O.) (respondent 1), and the Minister of Commerce and Industry (respondent 2), the applicant prays for the following reliefs: 20

1. A declaration of the Court that the decision of respondent 1 communicated to him on 10.7.1984, whereby his shop was classified as a tourist place of entertainment (category "tavern") as from the 1st August, 1984, is null and void. 25

2. A declaration of the Court that the decision of respondent 2 to approve the aforesaid decision or decisions of respondent 1 is null and void.

3. A declaration of the Court that the decision of respondent 2, dated 9.1.1985 whereby he dismissed the hierarchical recourse of the applicant for exemption of his shop from the "tourist places of entertainment" is null and void and of no legal effect. 30

The sub judge decision or decisions relate to a shop, a restaurant, which is operated by the applicant in Franklin Roosevelt Street, Limassol. By a decision of respondent 1 dated 20.1.1984, the shop of the applicant was classified as a "tavern" as from the 1st March, 1984, and was included in a list of 86 new tourist places of entertainment which was submitted to the Minister of Commerce and Industry (respondent 2) for his approval, which was in fact given.

After a number of fruitless efforts by respondent 1 to serve on the applicant a notice to the effect that his restaurant had been classified as a tourist one, in the category of "tavern" and after the refusal of the applicant to collect a registered letter sent to him in that respect, two inspectors of respondent 1, accompanied by the police, visited the tavern of the applicant on the 12th July, 1984 and delivered to him the said notice, which contained also information in respect of his obligations under the relevant legislation, and his right to file a hierarchical recourse to the Minister against such decision.

The applicant did file on 13.7.1984 a hierarchical recourse to the Minister against the decision to nominate his shop as a tourist place of entertainment and to classify it as a "tavern" advancing his grounds in support thereof.

Upon receipt of such recourse, the Director-General of the Ministry of Commerce and Industry asked the Director-General of respondent 1 to submit his observations on the matter which the latter did by letter dated 4.8.1984, whereby he expressed his opinion that the shop of the applicant should not be excluded from the provisions of the Tourist Places of Entertainment Law, giving also his reasons in support thereof.

The recourse of the applicant was examined at a meeting which took place on 15.9.1984 at the Ministry of Commerce and Industry, held by Mr. Chr. Loizides, who was assigned by the Minister to carry out such examination. According to the minutes of the meeting, two representatives of the Cyprus Tourism Organisation as well as the applicant and his advocate, attended the meeting and expressed their views.

After the discussion of the whole matter was concluded

counsel for applicant expressed a request to meet the Minister personally and explain to him his views, before a final decision was taken on the recourse. The hearing was concluded by a statement made by Mr. Loizides that he was going to visit the place personally within a short time. As a matter of fact, such local inspection was effected on the 18th September, 1984, by Mr. Loizides and two representatives of the Cyprus Tourism Organisation for the investigation of the matter raised by applicant and the whole case was referred to the Minister who decided to reject applicant's recourse. The reasons are contained in a letter of the Director-General of the Ministry of Commerce and Industry dated the 9th January, 1985, addressed to the applicant, copy of which was communicated to the Director-General of the Cyprus Tourism Organisation. Such letter reads as follows:

"I have been instructed to refer to your letter dated the 13th July, 1984. in connection with your application for the exemption of your shop from the provisions of the Tourist Places of Entertainment Law and wish to inform you that the Minister of Commerce and Industry has rejected your application for the following reasons:

(a) The shop 'Myrtia' is situated on the main road which leads to the new port of Limassol, an area where a satisfactory movement of clients both local and foreign is observed.

(b) In the same area and in particular in the same road other shops have been classified and operate as tourist places of entertainment.

(c) The shop satisfies all the requirements of the existing legislation for the classification of same as 'a tourist place' both in respect of structural appearance as well as from the point of view of operation and services rendered."

As a result, applicant filed the present recourse.

Counsel for applicant by his written address advanced the following grounds in support of his prayer:

(1) The hierarchical recourse was decided by the same organ which had previously approved the classification of applicant's shop as a tourist place of entertainment.

5 (2) The decision reached hierachically is wrong both as to the procedure followed and the fact that the applicant was never heard by the Minister.

(3) The decision of the Minister is not duly reasoned.

(4) The decision of the Minister is wrong for lack of due inquiry.

10 The first ground which in fact was argued at some length by counsel for appl'icant as the most important one, is that the hierarchical recourse was wrongly decided by the same organ which had previously approved the nomination and  
15 classification of applicant's shop as a tourist place of entertainment. In other words the C.T.O. with the approval of the Minister nominated and classified applicant's shop as a tourist place of entertainment in the category of "tavern" in accordance with section 2 of the Law, and the same  
20 Minister was also the organ which decided the hierachical recourse of the applicant against the above decision.

25 A perusal of all the material before me, leads to the conclusion that there has been a misinterpretation of the law and misapplication of its provisions by the respondents. In this respect and also for the purpose of considering the questions which pose for consideration before me, I find it necessary to make a brief reference to the relevant provision in the Tourist Places of Entertainment Law (Law 91/1979).

Section 2 of Law 91/79 reads as follows:

« 'τουριστικὸν κέντρον' σημαίνει κατάσταση»

30 (α) .....

(β) .....

(γ) .....

(δ) τὸ ὁποῖον ὁ Ὄργανισμὸς θέλει κατόπιν ἐγκρίσεως τοῦ Ὑπουργοῦ ὀρίσει ὀνομαστικῶς λόγω τῆς μορφῆς

τῶν ὑπ' αὐτοῦ προσφερομένων ὑπηρεσιῶν ἢ λόγῳ τοποθεσίας, συγκεντρώσεως ἢ κινήσεως πελατῶν, ταξιδιωτῶν, περιηγητῶν ἢ παραθεριστῶν, ἐν τῷ ὁποίῳ παρέχεται ὑπηρεσία κατ' ἐπάγγελμα καὶ ἐναντι ὁμοιβῆς.»

(and the English translation):

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( 'Tourist place of entertainment' means a shop-

(a)

(b)

(c)

(d) which the Organisation shall with the approval of the Minister nominate specifically, on account of the nature of the services rendered therein or on account of its location, attraction or movement of clients, travellers, tourists or holiday makers, in which services are rendered in the course of business and for remuneration.”)

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Section 4 of Law 91/79 reads as follows:

«4 Δι' ἕκαστον τουριστικὸν κέντρον διενεργεῖται ὑπὸ τοῦ Διοικητικοῦ Συμβουλίου, κατὰ τὸν καθοριζόμενον τρόπον καὶ διαδικασίαν, κατάταξις ἀναλόγως τῆς φύσεως τῶν ὑπ' αὐτοῦ παρεχομένων ὑπηρεσιῶν, εἰς μίαν ἢ πλείονας τῶν ἀκολουθῶν κατηγοριῶν:

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.....».

(and the English translation):

“4. For each tourist place of entertainment there is effected by the Administrative Board in the prescribed manner a classification in accordance with the nature of the services rendered by it, in one or more of the following categories.”)

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Section 10(1) of the same law, to which there is a marginal sub-heading “hierarchical recourse,” reads as follows:

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«10. (1) Πᾶς, ὅστις δὲν ἰκανοποιεῖται ἐξ ἀποφάσεως τοῦ Διοικητικοῦ Συμβουλίου ἢ τῆς Ἐπιτροπῆς ἐκδοθεί-

5 της δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου, δύναται ἐντὸς εἴκοσι ἡμερῶν ἀπὸ τῆς εἰς αὐτὸν κοινοποιήσεως τῆς σχετικῆς ἀποφάσεως, δι' ἐγγράφου προσφυγῆς εἰς τὸν Ὑπουργὸν ἐν ἧ ἐκτίθενται οἱ πρὸς ὑποστήριξιν ταύτης λόγοι. νὰ προσβάλη τὴν τοιαύτην ἀπόφασιν».

(And the English translation):

10 (“10—(1) Any person not satisfied by a decision of the Administrative Board or the Committee, issued under the provisions of this law, may, within twenty days from communication of the relevant decision, challenge such decision by a written recourse to the Minister, setting out therein the grounds on which it is based.”)

15 As it emanates from the above, the C.T.O. with the approval of the Minister, may include in the list of tourist places of entertainment a particular place by its name. After such approval is obtained, it is the task of the *Administrative Board* of the Organisation to classify such place under section 4, in one of the categories listed in that section and  
20 the Minister has nothing to do with such classification.

25 It is also clear from the wording of section 10 sub-section (1) that a hierarchical recourse lies only against a decision of the Administrative Board or the Committee of the Organisation against a decision with regard to the classification of a tourist place of entertainment under section 4, but not against a decision of the Organisation for the nomination of a place as a tourist place of entertainment which under s. 2(d) requires the prior approval of the Minister.

30 It seems that what has happened in the present case is that the Administrative Board of the C.T.O., first classified on 20.1.84 (Appendix 1 to the opposition) applicant's shop in the category of a tavern and then the Minister gave his approval on 10.2.84 (Appendix 2 to the opposition) for such classification which led to the consequential inclusion  
35 of applicant's shop in the tourist places of entertainment.

It is to be noted in the new Places of Entertainment Law, No. 29/85, which has repealed Law 91/79, but which does not apply in the present case, the phrase “touristikon



kentron" (tourist place of entertainment) in the interpretation section is replaced by the word "kentron" (place of entertainment) and is defined in paragraph (b) as meaning "one nominated by the Administrative Board of the Organisation as such." The provision requiring the approval of the Minister has been removed. Also section 12 of Law 29/85, makes provision for a hierarchical recourse to the Minister from any decision of the Administrative Board of the Organisation, which includes a decision under section 2(b). This change in the Law is an indication, in my view, that no hierarchical recourse could be made against a decision taken under section 2(d) of Law 91/79, in the way that section and section 10(1) of the same Law were drafted.

There is no separate reasoned decision of the C.T.O. at least none was produced to me, for the nomination of applicant's shop as a "tourist place of entertainment." It is clear from the letter of 10.7.1984 served on the applicant (appendix III to the opposition) informing him of the classification of his shop that the C.T.O. invited the applicant if he so wished, to appeal to the Minister against "the aforesaid decisions" which obviously included both a decision under section 2(d) and one under section 4 of the Law.

It is also obvious from the documents produced, concerning the procedure which was followed, that the hierarchical recourse was treated as being one from a decision under section 2(d) and not under section 4. Reference may be made to a note addressed to the Minister by Mr. Loizides who heard the case for the applicant, (appendix VII to the opposition) which is headed "Application of Mr. Papanayiotou for exemption of his shop "MYRTIA" in Limassol from the provisions of the Tourist Places of Entertainment Law." On top of this note it is written by hand "The rejection of the application for exemption is approved." The contents of this letter as well as the letter dated 9.1.1985 sent to the applicant informing him of the sub judice decision also speak for themselves. A situation thus arises whereby the Minister, who had already taken a decision approving not only the nomination of the shop of the applicant as a tourist

place of entertainment under section 2(d) (if there was such decision), but also its classification as a tavern under section 4, comes to review hierarchically his own decision. contrary to the rule of natural justice that no man will be  
5 a judge in his own cause. Even the notion of "hierarchical recourse" itself denotes that the recourse should be heard by a hierarchically superior organ, which is not the case here.

10 I therefore find that the sub judge decision was taken under a misconception of law and under a procedure not provided by the law and has to be annulled. In view of my finding as above, I consider it unnecessary to deal with the remaining grounds.

15 In the result this recourse succeeds and the sub judge decision is annulled with £50.- costs in favour of the applicant.

*Sub judge decision  
annulled. £50.- costs  
in applicant's favour.*