

(1987)

1987 March 13

(DEMETRIADES J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TEKNE V R.C. SP A AND TOUROONSULT, OF
ITALY, WITH A THEODOSSIADES AND K
PAPADOPOULOS,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE COUNCIL OF MINISTERS,
2 THE TENDER BOARD THROUGH ITS CHAIRMAN,
3 THE CYPRUS TOURISM ORGANISATION,

Respondents

(Case No 331/86)

Recourse for annulment — Revocation of sub judice decision — Whether and in what circumstances the applicant is entitled to judgment on the merits

The sub judice decision, whereby the tender for the submission of studies and plans for the tounstic development of Paphos was awarded to a firm, other than the applicants, was revoked after the filing of this recourse and thus the question arose whether the applicants, who were among the tenderers, are entitled to judgment on the merits

5

Held, annulling the sub judice decision, that in the light of the decisions in *Salem v The Republic* (1985) 3 C L R 453 at 454-455 and *Agathangelou v The Republic* (1986) 3 C L R 1512 and as on the material before the Court the conclusion is that the respondents were wrong in accepting the tender of the successful tenderers, the sub judice decision should be annulled

10

*Sub judice decision annulled
No order as to costs*

Cases referred to

15

Salem v The Republic (1985) 3 C L R 453,
Agathangelou v The Republic (1986) 3 C L R 1512

Recourse.

Recourse against the decision of the respondents to award the tender for the touristic development of Paphos area to a firm other than the applicants.

- 5 *A. S. Angelides*, for the applicants.
 N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

- 10 **DEMETRIADES J.** read the following judgment. The issue that arises in these proceedings is whether, in spite of the revocation by the administrative organ which took the sub judice decision, the applicants are entitled to a remedy under Article 146 of the Constitution.

The facts that led to this litigation are, in a nutshell, the following:

- 15 The Government of the Republic, in association with the Cyprus Tourism Organization, in their desire that the Paphos District is further developed as far as touristic facilities are concerned, asked national and international experts to submit studies and plans for the touristic development of the area. Several
20 international organisations submitted tenders to the Central Tender Board of the Government, out of which four were short-listed, one of them being the applicants of the recourse.

- 25 The administrative organs, that is the respondents who were entrusted with deciding to which organisation to grant the tender, finally decided in favour of another firm. The applicants, as a result, filed the present recourse claiming, amongst others, that the successful tenderer did not comply with the terms and conditions required by the respondents.

- 30 After the filing of this recourse the respondents sought advice from the Office of the Attorney-General of the Republic and as a result of the advice they received they revoked the sub judice decision.

Counsel for the applicants submitted that in spite of the

revocation of the sub judge decision the recourse has to be examined on its merits since the said decision has brought about consequences in relation to which the applicants may be entitled to damages or other remedy.

In *Salem v. The Republic*, (1985) 3 C.L.R 453 at 454-455, Triantafyllides P. had this to say on the issue: 5

«As the sub judge detention order appears to have been executed and as its execution was interwoven with the execution of the sub judge deportation order which, in the end, was not completed, I am of the view that this is not a case in which it is proper to say that this recourse has been abated due to having been deprived of its subject-matter; especially as it seems that the aforementioned two orders while they were operative have brought about consequences in relation to which, if the applicant is successful in this recourse, he might be entitled to seek redress under Article 146.6 of the Constitution.» 10 15

A. Loizou J., in *Agathangelou v. The Republic* (Judgment delivered in Recourses Nos. 779/85, 876/85, 888/85 and 991/85, on the 9th October, 1986, not yet reported)* is in full agreement with the legal position expressed in Salem's case, supra. 20

I am, also, in full agreement with the interpretation of the legal position as given by my brother Judges.

Having gone through the exhibits put at my disposal by counsel for the respondents, which give particulars of the tenders asked by the respondents, and having studied the offer of the successful tenderer, I find that the respondents were wrong in accepting the offer and that the sub judge decision should be annulled. 25

Order accordingly. 30

There will be no order as to costs as none are claimed.

Sub judge decision annulled. No order as to costs.

A.S. 35

*Reported in (1986) 3 C.L.R 1512.