

1987 January 10
[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGE P ZACHARIADES LTD ,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE DEPARTMENT OF WATER DEVELOPMENT,
2 THE CHAIRMAN OF THE TENDER BOARD,

Respondents

(Case No 809/86)

Acts or decisions in the sense of Article 146 1 of the Constitution—Tenders—Award of contract—Administrative action in the realm of public law concluded by such an award—Steps to be taken pursuant to the award are within the domain of private law and therefore, not within the ambit of the Jurisdiction under Article 146 1

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The applicants who are seeking the annulment of the decision, whereby the tender of the interested party in respect of the «Southern Conveyor Project Contract C5(A) No 39/84/73» was accepted, applied for a provisional order suspending all further action by the respondents in finalizing the award and restraining them from taking any further step to finalize the relevant contract or from entering into it with the interested party

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It is common ground that though the tender of the interested party was accepted the relevant contract has not yet been executed

Held dismissing the application (1) In the light of the case law the administrative action in the realm of public law was concluded by the award of the contract to the interested party and the steps to be taken pursuant to the award come within the realm of private law and are outside the jurisdiction under Article 146 of the Constitution

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(2) As therefore, the matters to which the application relates are outside the

said Jurisdiction, the application has to be dismissed

*Application dismissed
No order as to costs*

Cases referred to

5 *Medcon Construction v The Republic* (1976) 3 C L R 535

Kounnas and Sons v The Republic (1972) 3 C L R 542,

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

Decisions 1265/64 and 1296/65 of the Greek Council of State

Application for interim order.

10 Application for an order of the Court suspending all further action by respondents in finalizing the award of the tender of the interested party in respect of the «Southern Conveyor Project Contract C5(A) No 39/84/73»

G Cacoyiannis with P Mouaimis for the applicants

15 *A Evangelou, Senior Counsel of the Republic* for the respondents

T. Papadopoulos, for the interested party

Cur adv vult

20 TRIANTAFYLLIDES P read the following decision: The applicants have filed on the 23rd December 1986 the present recourse by means of which they are seeking, in effect, the annulment of the decision—which was notified to applicants' counsel on the 18th December 1986—to accept, in respect of the «Southern Conveyor Project Contract C5(A) No 39/84/73» the tender of the interested party instead of that of the applicants

25 This recourse is inextricably related to an earlier recourse of the applicants, No 793/86, which was filed on the 17th December 1986, and by means of which they are, in effect, seeking the annulment of the decision to accept the aforementioned tender of the interested party as valid

30 On the 23rd December 1986 when the present recourse No 809/86, was filed, there was also filed by the applicants an application for a provisional order suspending all further action by the respondents in finalizing the award of the said contract to the

interested party and restraining them from taking any further steps to finalize such contract or from entering into it with the interested party.

This application was served on the respondents and the interested party and, when it came up before this Court for hearing on the 2nd of January 1987, counsel for the respondents and for the interested party raised the preliminary objection that this Court does not possess jurisdiction to make the provisional order applied for as it relates to matters within the domain of private, and not of public, law, which, therefore, do not come within the ambit of the jurisdiction of this Court under Article 146 of the Constitution. 5 10

As it appears from the material before me a Ministerial Committee decided on the 9th December 1986 to accept the proposal of respondent 2, who is the Chairman of the Tender Board, to award the contract in question to the interested party. This decision was communicated to the interested party by means of a letter of respondent 1 dated the 17th December 1986. 15

It is common ground that such contract has not yet been finally executed.

It is, also, not disputed that the process leading up to the award of the relevant contract to the interested party is a composite administrative action in the realm of public law, but that any action which is to be taken after the execution of the contract would be in the realm of private law. 20

What is in dispute is whether the steps to be taken after the award of the contract and leading up to its execution are within the realm of private law or are a continuation of the aforementioned composite administrative action and are, therefore, within the realm of public law. 25

In the light of case-law such as *Medcon Construction v. The Republic*, (1968) 3 C.L.R. 535, 545, *Kounnas and Sons Ltd. v. The Republic*, (1972) 3 C.L.R. 542, 546 and *Matsoukas v. The Republic*, (1984) 3 C.L.R. 1443, 1452, 1453, I am of the view that, in the present instance, the administrative action in the realm of public law was concluded by the award of the contract to the interested party and that the steps to be taken pursuant to such award come within the realms of private law, and are outside the ambit of the jurisdiction of this Court under Article 146 of the Con- 30 35

stitution

I am reinforced in this view by the decisions of the Council of State in Greece in cases No 1265/1964 and 1296/1965, and it is to be observed, in relation to the reference in the decision of the
5 Council of State in Greece in case 1265/1964 to Articles 83 and 86 of the Greek Constitution of 1952, that the jurisdiction of the Council of State under Article 83(c) of the Greek Constitution of 1952 (to which corresponds Article 95(1) (a) of the Greek Constitution of 1975) is analogous to the jurisdiction of this Court
10 under Article 146 of our Constitution, whereas this Court does not possess the jurisdiction to deal with the substance of an administrative dispute as envisaged by Article 86 of the Greek Constitution of 1952 (to which corresponds Article 94 of the Greek Constitution of 1975)

15 I am, therefore, of the opinion that the matters to which the application for a provisional order relates are outside the ambit of the jurisdiction of this Court under Article 146 and for this reason the application for a provisional order has to be dismissed

In concluding I should observe that the issue of the validity of the
20 tender of the interested party, as well as the issue of whether or not there was actually reached a final agreement as between the Government and the interested party in respect of such tender, are issues which are not relevant to the matters in relation to which the provisional order has been sought, but they might be found to be
25 relevant to the validity of the decision to award the contract to the interested party, which is challenged by means of the present recourse and which is within the domain of public law

I shall not make any order as to the costs of the present application for a provisional order

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*Application for provisional
order dismissed No order as costs*