

(1988)

1988 May 21

[STYLIANIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS KALAVAZIDES LTD.,

Applicants,

v.

THE MUNICIPALITY OF LIMASSOL,

Respondents.

(Case No. 368/86).

Municipalities—Refuse collection fees—Principles governing their assessment.

Misconception of fact—Presumption as to correctness of the findings of fact by the administration—Displacement of—The burden lies on the applicant—Doubt should, at least, be created in the mind of the Court—Courses which the Court may follow, if such doubt is created.

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General principles of administrative law—Evaluation of primary facts—The province of the administration.

By means of this recourse the applicants impugn the validity of the decision to impose on them, in respect of their carpentry workshop £100 refuse collection fees.

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The applicants' main complaint is that the fee is excessive, if judged on the basis of the only criterion applicable, i.e. the value of the services rendered by the respondents to the applicants.

Held, *dismissing the recourse*: (1) The fees should be based proportionately on the costs of the services rendered to the citizen, having regard to the costs for providing the service in general. The distribution of the costs for providing the service should be fairly distributed among the beneficiaries by equitable criteria.

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(2) The evaluation of the primary facts, is in general within the power of the administration. There is a presumption as to correctness of the findings of fact made by the administration. The presumption is displaced, if an applicant succeeds in creating a doubt in the mind of the Court about such correctness.

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(3) In this case the applicants failed to rebut the presumption.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Sentónaris v. The Greek Communal Chamber, 1964 C.L.R. 300;

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Republic v. Georghiades (1972) 3 C.L.R. 594.

Recourse.

Recourse against the decision of the respondents to impose on applicants the sum of £100.- refuse collection fees for 1985.

P. I. Soteriou, for the applicants.

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Y. Potamitis, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. Applicants are occupiers of premises at Kefallinia Street, No. 30, Limassol, which they use as carpentry work-shop. Respondents imposed an amount of £100.- refuse collection fees in respect of the above premises for the year 1985. As against the decision imposing the above amount applicants filed the present recourse praying for: -

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"A declaration of the Court that the act and/or decision of the Respondents whereby there was imposed on Andreas Kalavazides and after an amendment of the charge sheet on applicant company an amount of £100.- as refuse collection fee in respect

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of their premises at 30, Kefallinia Street, Limassol, is null and void and of no effect whatsoever."

The main submission on behalf of applicants was that the proper criterion for the determination of the fees is the value of the services rendered and that on the basis of this criterion the fee that has been imposed is excessive. 5

On the other hand learned counsel for the Respondents submitted: -

(a) That, under the relevant Regulations, the Respondents can impose a fee up to £1,000.- in respect of premises; and that the amount of fee represents the reasonably required cost for the services rendered. 10

(b) That the assessment of the said fee was made within the reasonable exercise of the discretionary powers of the respondents who have taken into consideration all the relevant facts and relied on criteria which were laid down by respondents in the absence of any criteria in the law. These criteria were: - 15

(a) The volume of applicant' premises.

(b) The number of personnel working therein.

(c) The nature of the work carried out therein. 20

(d) the increased from year to year cost of collection, transport and burying of the refuse.

(e) The amount of the expenses required by the respondent for the collection, transport and burying of the refuse.

(f) Generally the services rendered. 25

In an affidavit sworn by the Town Clerk and the Treasurer details are given of the cost of collection, transport and burying of

refuse for 1985.

5 The fees should be based proportionately on the costs of the services rendered to the citizen, having regard to the costs for providing the service in general. The distribution of the costs for providing the service should be fairly distributed among the beneficiaries by equitable criteria.

10 The evaluation of the primary facts, on which the criteria laid down by the Respondents were applied, is in general within the power of the Municipality. The Court cannot substitute its own evaluation for that of the Administration. There is a long line of cases which decide that there is a presumption in favour of the correctness of the findings of fact by the Administration. This presumption is weakened, once the applicant succeeds in rendering possible the existence of misconception of fact on the part of the Administration, even by creating doubts in the mind of the
15 Court about the correctness of such findings of fact. In such a case, the Administrative Judge, finding himself in doubt, resorts to one or two courses: Either (a) directs production of evidence, of (b) he annuls the act so that the Administration may ascertain the actual circumstances in a way not leaving doubts - (*Stavros Sentonaris v. The Greek Communal Chamber*, 1964 C.L.R. 300; *Republic (Public Service Commission) v. Lefkos Georghiades*,
20 (1972) 3 C.L.R. 594).

25 The mistaken evaluation of the real facts and the mistaken subjection or non-subjection of those facts to the said legal provisions, constitutes contravention of the law for the purposes of Article 146. Misconception of fact by the Administration is an indirect contravention of the law, and provides a reason for the annulment of such decision of the Administration - (*Tsatsos Application for Annulment Before The Council of State*, 3rd Ed., p.
30 31).

The burden lies on the applicant to satisfy the Court, or to create a doubt in the mind of the Court of wrong evaluation of the facts which led to misconception of fact. It is upon the applicant,

also, to satisfy that the principle of proportionality has been infringed. The principle of proportionality, which is recognized in the Administrative Law of several continental countries, is one of the heads of grounds on which administrative action is subject to control by judicial review.

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Having considered with care the material before me, I have not been persuaded that the sub judice decision may be declared void for any reason. The fact that the applicants run a carpenter's workshop, by itself is not sufficient to discharge the burden cast on the applicants.

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In the result, the case is dismissed, sub judice decision confirmed, but, in all the circumstances of the case, there will be no order as to costs.

Recourse dismissed.
No order as to costs.

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