

1988 September, 24

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SATURN BUILDING CO. LTD.,

Applicant.

v.

THE SEWAGE BOARD OF NICOSIA,

Respondent.

(Case No. 521/86).

Time within which to file a recourse for annulment—Tenders—Letter dated 24.5.86 informing applicant that its tender was contrary to law—Letter dated 18.6.86 informing applicant that the tender was awarded to somebody else—Recourse filed on 21.8.86—Out of time.

Words and phrases: "Total value of the works" in the First Schedule to the Building Contractors (Registration and Control) Law, 1973 (Law 97/73), as amended by Law 38/82.

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The applicant company was at all material times a contractor registered in the Fourth Schedule in accordance with section 9 of the aforesaid law. Consequently, the applicant could undertake works not exceeding £152,800.

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The applicant submitted a tender to the respondents for installation of sanitary sewage. The amount of the tender was £119,295.60, excluding the value of the pipes (£37,200).

By letter dated 24.5.86 respondents informed counsel for applicant that the tender was contrary to the aforesaid law. By letter dated 18.6.86 the applicant was informed of the decision to award the tender to somebody else. This recourse was filed on 21.8.86.

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Held, dismissing the recourse: (1) The recourse is out of time as having been filed after the expiration of 75 days from the day when the applicant

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acquired knowledge that its tender could not be accepted.

5 (2) The expression "total value of the works" in the First Schedule to Law 32/82, as it is worded, should mean "The total amount which is required for the construction of the project as a whole", which includes the value of all the materials and fixtures as well as labour and other related and incidental expenses. It cannot be just the value of the works agreed to be executed by the contractor.

Recourse dismissed.

No order as to costs.

10 *Cases referred to:*

Pissas (No. 2) v. Electricity Authority of Cyprus (1966) 3 C.L.R. 630;

Plousiou v. The Central Bank of Cyprus (1982) 3 C.L.R. 230.

Recourse.

15 Recourse against the decision of the respondent to award the tender for the installation of the sanitary sewage system, stage 1, Pallouriotissa to the interested party instead of the applicant.

A. Skordis with A. Papacharalambous, for the applicant.

K. Michaelides, for the respondent.

Cur. adv. vult.

20 MALACHTOS J. read the following judgment. In this recourse the applicant company claims a declaration of the Court that the decision of the respondent Board of 18.6.86 not to accept its tender for the installation of the sanitary sewage system, stage 1, Pallouriotissa, is null and void and of no legal effect whatsoever.

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The relevant facts of the case are the following:

On 17.4.86 the respondent Board of Nicosia invited tenders

for the installation of sanitary sewers and other related works in the area of Pallouriotissa. One of the tenderers was the applicant company who submitted its tenders within the time limit prescribed by the aforesaid invitation. The tender of the applicant company was for the amount of £119,295.60 c. excluding the value of the pipes to be included in the works the total value of which was £37,200.- 5

The applicant company was at all material times a contractor registered in the Fourth Schedule in accordance with section 9 of the Building Contractors (Registration and Control) Law, 1973 (Law 97/73) and the First Schedule thereto, as amended by Law 38/82 and was under the aforesaid legal provisions entitled to undertake technical works of a total value of not exceeding £120,000 and as readjusted by section 10 of Law 32/82 of a total value of not exceeding £152,880.- 10
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The respondent Board rejected the tender of the applicant on the ground that under the aforesaid legal provisions the latter was not entitled to construct the works as their total value in accordance with its tender would have been £156,495.60 c.

The applicant company was informed of the decision of the respondent to award the contract to a third person by letter dated 18.6.86 and as a result, filed the present recourse on 21.8.86. 20

Before embarking to consider the recourse on its merits, it is pertinent to consider first as to whether it was filed within the time limit of 75 days prescribed by Article 146.3 of the Constitution which in any case, is a matter that can be raised by the court ex proprio motu (See *Pissas (No.2) v. Electricity Authority of Cyprus* (1966) 3 C.L.R. 630 at page 636). 25

As it appears from the documents before me, the respondent's advocate wrote to counsel for applicant on the 24th May, 1986 informing him that the extent of the works which the applicant company could undertake, was less than the amount of his tender and so it was contrary to law. It is, therefore, obvious that the appli- 30

5 cant company had knowledge that its tender could not be accepted by the respondent. See in this respect *Plousiou v. The Central Bank of Cyprus* (1982) 3 C.L.R. 230 at page 236. So, on 21.8.86 when the applicant filed his recourse, it was after the lapse of 75 days time limit prescribed by the Constitution and, therefore, the recourse should be dismissed.

10 I shall now proceed very briefly to deal with the merits of the recourse on the assumption that it has been filed within the prescribed time. It was contended on behalf of the applicant that its tender was wrongly considered as exceeding the amount specified by section 9 of the Law, which is of the total value of £152,880. It was also argued on behalf of the applicant that the respondent wrongly counted the value of the pipes as the said pipes were going to be supplied by the respondent Board.

15 I consider that in the absence of any provision to the contrary the expression "total value of the works", in the First Schedule to Law 32/82, as it is worded, should mean "The total amount which is required for the construction of the project as a whole", which includes the value of all the materials and fixtures as well as labour and other related and incidental expenses. It cannot be just 20 the value of the works agreed to be executed by the contractor.

For all the above reasons this recourse fails and is hereby dismissed with no order as to costs.

25 *Recourse dismissed.*
No order as to costs.