

1988 October 22

[PAPADOPOULOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

K.M.C. MOTORS LIMITED,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTRY OF COMMUNICATIONS AND WORKS,  
2. THE DEPARTMENT OF CIVIL AVIATION,  
3. THE TENDER BOARD,

*Respondents.*  
*(Case No. 256/83).*

*Time within which to file a recourse—Knowledge of the party affected by the decision—When does such knowledge set in motion the machinery.*

The facts of this case appear sufficiently in the Judgment of the Court.

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

5

*Cases referred to:*

*Moran v. The Republic*, 1 R.S.C.C. 10;

*Ploussiou v. Central Bank* (1982) 3 C.L.R. 230.

**Recourse.**

Recourse against the decision of the respondents to award the tender for the supply of two semi-trailer airfield passenger buses to the interested party instead of to the applicant.

10

*Ph. Valiantis*, for the applicants;

*M. Cleridou—Tsiappa* (Mrs.), for the respondents;

*E. Liatsou* (Mrs.) for *Chr. Triantafyllides*, for the interested party;

*Cypr. adv. vult.*

PAPADOPOULOS J. read the following judgment: "By the present recourse the applicants seek a declaration of the Court that the decision of the respondents to award a tender for the supply of two semi-trailer airfield passenger buses to the interested party instead of to the applicants, is null and void of no effect whatsoever. The relevant facts are in brief the following:

Tenders were invited for the supply to the respondents of two semi-trailer airfield passenger buses. After examination and scrutiny by the appropriate body, the tenders were submitted to the Tender Board with their suggestions. Eventually the supply of the two airfield buses was given to the interested party. The decision was taken on the 15/12/82 by respondent 3 and was communicated to the Department of Civil Aviation on the 21/12/82. The Tender Board, respondent 3, by a letter dated 2/2/83, informed the applicants that they had been unsuccessful in their tender. However, before that letter was written and in particular, on the 27/1/83, the applicants, the interested party and another company, Me-Co Metal Construction Ltd., signed a document with regard to the manufacture of part of these airfield buses.

On the 16/6/1983, this recourse was filed whereby the applicants seek the remedy already stated earlier. It is the allegation of the applicants that the decision of the Tender Board was taken in contravention of the Law, *ultra vires*, in abuse of power, and that they were acting under a misconception as to the facts. They had put down a number of reasons to support their application, which at this stage I believe I need not mention but I intend to do so after examining the preliminary point of the respondents if need be.

It is the submission of learned counsel for the respondents that the recourse was filed after the lapse of 75 days from the date when the decision complained of was taken and consequently, the recourse is out of time.

It is the allegation of the applicants that the actual decision of the Tender Board was not in December 1982, as alleged by the respondents, but in fact it was taken on the 18th of April 1983, and they base their allegation on a letter sent by the interested party to Civil Aviation. 5

The most crucial point I have to decide at this stage is whether the decision for the tender was taken on the 15/12/82 or after the 18th of April 1983. I have read with great interest the letter of the interested party and indeed I have gone through the file to see what was exchanged between the parties. I have come to the conclusion that the decision for the tender was finally and conclusively taken on the 15th of December 1982. From all correspondence, exchange of letters, either between the interested parties and the respondents, or the applicants and the respondents, or among them, or among all of them, one can easily, in my opinion, deduct that both the interested parties and the applicants were trying to make some modifications to the tender so that each one of them would take some kind of benefit but these events or these letters which I have studied with care, do not, in my opinion, cancel the original decision of the respondents and revive it for a new decision. So, I take it as a fact that the decision complained of was taken on the 15th of December 1982 and not at the end of April or in the beginning of May 1983, as it is alleged by the applicants. 10  
15  
20  
25

In the light of my above finding, the recourse is out of time and cannot succeed. I need only cite a passage from the judgment of the Supreme Court in the case of *Moran v. The Republic, 1 R.S.C.C. 10 at page 13*, which reads: 30

"The Court is of the opinion that the period of time provided for in the said paragraph 3 is mandatory and has to be given effect to in the public interest in all cases. Such view is in ac-

5 'cordance with the interpretation of analogous provisions given by administrative tribunals in a number of European countries and is also the view of authoritative writing on this subject. Exceptional circumstances recognized by the above authorities as affecting the running of such period do not arise on the facts of this case.

10 As in the present case the acts complained of were not published, in order to find as from when the period of seventy-five days began to run, it is necessary to ascertain when such acts came to the knowledge of the Applicant...

15 In the opinion of the Court 'knowledge' means knowledge of the decision, act or omission giving rise to the right of recourse under Article 146 of the Constitution and not knowledge of evidential matters necessary to substantiate before this Court an allegation of unconstitutionality, illegality or an excess or abuse of power".

And also a passage from the case of *Ploussiou v. Central Bank* (1982) 3 C.L.R. 230, which states:

20 "Article 146.3 of the Constitution postulates knowledge of the decision as a necessary prerequisite for setting in motion the machinery for judicial review of the decision. The aggrieved party must challenge a decision within 75 days, the constitutional period of limitation...

25 ...The reasoning behind the decision need not come to the knowledge of the party affected thereby for the 75-day period to begin to run. This was settled by a series of decision given soon after the introduction of administrative law as a separate branch of our legal system. (See *John Moran v. The Republic*, 1 RSCC 10; *The Holy See of Kitium v. Minicipal Council of Limassol*, 1 R.S.C.C. 15)...

30 Article 146.3 does not envisage knowledge from any particular source. All it requires is knowledge of the decision, cer-

tain enough to enable a party affected thereby to pursue his rights. A party, an existing legitimate interest of whom is prejudiced by the decision, is deemed to be in such a position as soon as he gains adequate knowledge of the decision itself. Adequate is that kind of knowledge that comprises every material aspect of the decision."

5

In the light of the above, the recourse fails without any order as to costs.

*Recourse dismissed.*

*No order as to costs.*

10