

1988 March 19

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE COSTITUION

FEDERATED AGENCIES LTD.,

Applicants.

v.

THE MUNICIPALITY OF LIMASSOL,

Respondent.

(Case No. 640/86).

Misconception of fact—Presumption that an administrative act has been taken after correct ascertainment of facts—Rebuttable—May be rebutted by raising doubt in the mind of the Court—Burden of raising such a doubt—Lies on the applicant.

5 The facts of this case sufficiently appear from the judgment of the Court.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

10 *Republic v. Ekkeshis* (1975) 3 C.L.R. 548:

Skaros v. The Republic (1986) 3 C.L.R. 2109.

Recourse.

Recourse against the decision of the respondent to impose the

sum of £ 600.- professional tax on the applicant company.

A. Drakos for the applicant.

Y. Potamitis, for the respondent.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant company impugns by means of the present recourse the decision of the respondent Municipality dated 5.8.86, whereby £600.- professional licence was imposed on the applicants, for carrying on business for profit within the Municipal limits of the respondent Municipality.

The applicants a limited company duly registered in Cyprus were carrying on, at all material times, travel, tourist and insurance agency business, with a main office at Nicosia, keeping at the same time a permanent sub-office in Limassol Town, where they were employing more than 12 employees.

Applicants applied to the respondent Municipality pursuant to the provisions of s. 105(1) of Law 111/85 (as amended) for the issue of a professional licence to them for the year 1986.

The respondent Municipality imposed professional licence amounting to £600.- and notified applicants accordingly. It may be noted in this connection that the maximum professional licence envisaged by the Third Schedule to the Law for the carrying on of business similar to that of the applicants by companies of limited liability is £1000.

The applicant feeling aggrieved filed the present recourse challenging the said imposition of £600.- professional licence fee imposed by the respondent, relying on several grounds set out in their recourse which may be grouped together under two broad Heads:

(A) Failure to carry out due inquiry resulting in material misconception as to the actual facts.

(B) Discriminatory treatment of the applicants, and violation of the principles of fair administration.

5 I shall proceed to examine the complaints in the order set out above:

In Republic v. Ekkeshis (1975) 3 C.L.R.548 the following were stated by the Full Bench of this Court at p. 555:

10 "No doubt, discretionary powers must be exercised without a misconception about a material fact.

15 If that happens, the decision reached is contrary to law, in the sense that the law was applied on a wrong factual basis. On the other hand, there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts, though such presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of (See Stassinopoulos, Law of Administrative Acts, (1951) 304 et seq.) .The burden of establishing that an administrative decision was reached on the basis of a misconception about a material fact, lies on the person challenging the validity of such decision on this ground....."

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25 In the instant case the applicants, on whose shoulders the burden of proof lay, failed to establish that the administrative decision in question was reached at on the basis of a misconception as to material facts. I may even go further and say that the applicants failed even to raise a doubt to my mind in this respect; and in this connection it is well settled that "a probability that the misconception has led to the taking of the decision complained of is sufficient to vitiate an administrative act" (vide *Skaros v. The Republic* (1986) 3 C.L.R. 2109 at p. 2115).

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In the circumstances the complaints grouped under (A) above are doomed to failure.

As regards complaints grouped under (B) above, it must be stated at the outset that the relevant allegations connected therewith, are quite vague and uncertain. 5

Mere reference by applicants to companies 'TUI' and 'SUN INSURANCE OFFICE LTD' and the amount of professional tax imposed on them for the year 1986, does not provide material sufficient for any sort of comparison; neither the nature and the ratio of the business of the aforesaid companies nor any other material incidental to their activities is anywhere mentioned in the present recourse. 10

Thus the applicants failed even to assert positively the discrimination complained of in clear and succinct terms; furthermore they failed to establish anything pointing towards the direction of the alleged discrimination or the alleged violation of the principles of fair administration. 15

For the above reasons the complaints of the applicant grouped under "B" have to be dismissed, as well.

In the result present recourse fails and is accordingly dismissed. Let there be no order as to costs. 20

*Recourse dismissed.
No order as to costs.*