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GEORGHIOS
MICHAEL
KALLOURIS
and
THE REPUBLIC
OF CYPRUS,
THROUGH
THE PUBLIC
SERVICE
COMMISSION
(AN INDEPEN-
DENT BODY)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MICHAEL KALLOURIS

Applicant,

and

THE REPUBLIC OF CYPRUS,
THROUGH THE PUBLIC SERVICE COMMISSION
(AN INDEPENDENT BODY),

Respondent.

(*Case No.* 187/62)

Administrative Law—Public Officers—Promotion of public officers by decision of a collective body, in this case the Public Service Commission established under Article 124 *of the Constitution—Participation in the relevant proceedings of a member related to some of the candidates—Invalidity of the resulting decision in so far as the candidates so related are concerned—Even if the said decision did not result because of the vote of such member.*

Administrative and Constitutional Law—The Public Service Commission—Article 124 *of the Constitution—Temporary absence of its Chairman during a meeting for interviewing of candidates for promotion—*Pro tempore *presiding over by a member of the said Commission at the request of the Chairman—Such* pro tempore *presiding over not excluded by Article* 125.2 *of the Constitution.*

The applicant in the present recourse, complains that the decision of the Public Service Commission to promote the three Interested Parties (1) Seraphim Michael, (2) Michael Papadouris and (3) Andreas Hadji Yianni, to the post of Forest Ranger, in preference and instead of him is null and void.

Counsel for the applicant has challenged the validity of the decision concerned on two main grounds :

(*a*) That at the meeting of the 14th June, 1962, when the promotions in question were decided upon, the late Mr. Michaelides, a then member of the Commission, took part in the vote, though he was related to some of the candidates ; he was the first cousin of the applicant whilst Interested Party

Michael Papadouris is married to a niece of his and Interested Party Seraphim Michael is the son of a first cousin of his.

(*b*) That at one of the meetings of the Commission *viz.* on the 24th April, 1962, at which interviews of the candidates took place leading to the decision of the 14th June, 1962, the Chairman of the Commission absented himself for some time and had asked one of the members, again the late Mr. Michaelides, to preside in his place.

Paragraph 2 of Article 125 of the Constitution provides that the Chairman of the Public Service Commission convenes and presides at the meetings of the Commission.

Held, on ground (*a*) :

(1) Three candidates *i.e.* the applicant and two of the Interested Parties, Seraphim Michael and Michael Papadouris, were sufficiently related to the late Mr. Michaelides, by present-day Cyprus realities and standards—of which I take judicial notice—so as to render it proper to treat them, for the purposes of this case, as close, rather than distant, relatives of his.

(2) The principles adopted in Greece, that the participation of a disqualified member in a collective body involves the invalidity of the resulting decision, even if it did not result because of the vote of such member, gives expression to basic requirements of natural justice and is a general principle of administrative law constituting a most necessary and useful rule of proper administration and, as such, it ought to be followed by this court too.

Principle laid down in the Decision 1187/1950 (vol. 1950A p. 991), of the Greek Council of State, followed.

(3) The paramount requirements, *viz.* that the composition of a collective body should appear to guarantee an independent judgment and should be such as not to shake the confidence of the subject in the impartiality of such organ, have been defeated to such an extent through the participation in the proceedings of the Commission of a relative of three *inter se* competing candidates, so as to render its composition for the relevant purpose defective and its eventual decision in the matter invalid, in so far as the two Interested Parties, Michael Papadouris and Seraphim Michael, are affected.

(4) Therefore, the promotions of the Interested Parties, Michael Papadouris and Seraphim Michael, to the post of Forest Ranger should be declared to be null and void on ground (*a*) put forward by counsel for applicant.

Held, on ground (*b*) :

(1) The provisions of Article 125.2 of the Constitution do not exclude a member from presiding over the Commission, once he was authorised to do so in the appropriate manner.

(2) A provision concerning who is to preside, with absence of provision of what is to happen as regards presiding in case of absence of the Chairman, cannot be taken as excluding proper arrangements for a *pro tempore* chairman of a meeting.

(3) Ground (*b*) of applicant cannot succeed and, therefore, the promotion of Interested Party, Andreas Hadji Yiannis is not invalid on this ground either.

Order in terms.

Cases referred to :

Decision No. 1187 *of* 1950 *of the Greek Council of State* (vol. 1950A, p. 991) ;

Decision No. 1451 *of* 1954 *of the Greek Council of State* (vol. 1954G.B, 1782 at p. 1783) ;

Decision No. 351 *of* 1956 *of the Greek Council of State* (vol. 1956A, p. 471 at p. 473) ;

Decision No. 1286 *of* 1957 *of the Greek Council of State* (vol. 1957B, p. 657) ;

Case of Decharme, decided in 1952 *by the French Council of State ;*

Case of Ricros, decided in 1954 *by the French Council of State ;*

Decision 1323 *of* 1954 *of the Greek Council of State* (vol. 1954B, p. 1625) ;

Papapetrou and the Republic, 2 R.S.C.C. 61, at p. 71 ;

Decision 1016 *of* 1954 *of the Greek Council of State* (vol. 1954B, p. 1232) ;

Decision 617 *of* 1954 *of the Greek Council of State* (vol. 1954A, p. 724).

Recourse.

Recourse against the decision of the Public Service Commission dated 2nd August, 1962, to promote the three

Interested Parties, Seraphim Michael, Michael Papadouris and Andreas Hadji Yiannis, to the post of Forest Ranger, in preference and instead of the applicant.

L. N. Clerides for the applicant.

K. C. Talarides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of :—

TRIANTAFYLLIDES, J.: The applicant in this case complains that the decision of respondent to promote the three Interested Parties, Seraphim Michael, Michael Papadouris and Andreas Hadji Yianni, to the post of Forest Ranger, in preference and instead of the applicant is null and void.

On the 14th June, 1962, the Public Service Commission, having interviewed in April, 1962, some thirty Foresters with a view to filling vacancies in the post of Forest Ranger, promoted thereto the said Interested Parties : applicant though he had been interviewed, as a candidate, was not promoted. The relevant decision of the Commission is *exhibit* 3 in this case. In all, ten Foresters were promoted to Forest Rangers.

All interested Parties, having already been previously informed of these proceedings, were duly notified also of the hearing of this case, but they did not appear on that day ; that was a course which they were perfectly entitled to adopt, being content with the defence of this case by the Republic's counsel.

Counsel for applicant has challenged the validity of the decision concerned on two main grounds ; the factual content of which became eventually common ground at the hearing of this case :

(*a*) That at the meeting of the 14th June, 1962, when the promotions in question were decided upon, the late Mr. Michaelides, a then member of the Commission, took part in the vote, though he was related to some of the candidates ; he was the first cousin of applicant whilst Interested Party Papadouris is married to a niece of his and Interested Party Michael is the son of a first cousin of his, as it is stated in the uncontested facts of the statement of the case.

(*b*) That at one of the meetings of the Commission *viz.* on the 24th April, 1962, at which interviews of the candidates took place leading to the decision of the 14th June, 1962, the Chairman of the Commission absented himself for some time and had asked one of the members, again the late Mr. Michaelides, to preside in his place.

I shall deal first with ground (*a*), above.

There is no suggestion whatsoever that Mr. Michaelides has not acted all along with good faith. This has been made abundantly clear by counsel for applicant. Nor is it suggested that through Mr. Michaelides casting his vote the Commission has reached a decision, which would not have been reached if he had not voted on the 14th June, 1962.

There remains, therefore, to decide if, in the absence of bad faith or decisive influence on the outcome of the matter, nevertheless, the participation of a member of the Commission, who was related to some of the candidates should render the decision reached void, on the ground of defective composition of the Commission for the purpose of reaching such a decision.

The matter is one of proper administration and natural justice. It has to be resolved in accordance with generally accepted principles of administrative Law relevant to it.

A leading case in Greece, which appears to lay down the principle applicable there, is the decision of the Council of State 1187/1950 (vol. 1950A, p. 991) where it is stated—

«Τὰ ὄργανα, τῶν ὁποίων, ἀπαιτεῖται κατὰ νόμον ἡ σύμπραξις διὰ τὴν παραγωγὴν διοικητικῆς τινος πράξεως, δέον ὅπως παρέχωσιν ἐγγύησιν ἀμερολήπτου κρίσεως. Ὁ κανὼν οὗτος δὲν ἀποτελεῖ τὸ περιεχόμενον ἠθικοῦ μόνον αἰτήματος τῆς Πολιτείας δικαίου, ἀλλὰ συνιστᾶ καὶ νομικὴν ἐπιταγήν, ἧς ἡ παράβασις ἐπάγει ἀκυρότητα, ὅταν δεσμοὶ ἢ ἰδιάζουσα σχέσις πρὸς τὰ πρόσωπα, εἰς ἃ ἀφορᾷ ἡ κρινομένη ὑπόθεσις, ἢ συμφέρον εἰς τὴν ἔκβασίν της, δημιουργοῦσι τεκμήρια ἐπηρεασμοῦ τοῦ ὀργάνου, κλονίζοντα τὴν πεποίθησιν τοῦ διοικουμένου ἐπὶ τὸ ἀδιάβλητον τῆς κρίσεως αὐτοῦ.»

(" The organs of which the participation is required for the making of an administrative act, must appear to guarantee an independent judgment. This rule is not only a moral need for the existence of a State under the

Rule of Law, but it also amounts to a legal ordinance the contravention of which has as a consequence the invalidity of an act, when ties or a special relationship with the persons, to which the matter under examination refers, *or an interest in the outcome of such matter*, create the presumption of bias of the organ concerned, shaking the confidence of the subject in the impartiality of such organ.")

Actually in the above Greek case the Council of State declared certain promotions to be void because on a board, the consent of which was a necessary step to such promotions, sat a member who was closely related to two of the candidates who were promoted. The said candidates were considered to be suitable for promotion unanimously, but the Council of State held that this factor could not affect the outcome of the recourse because the participation of the said member on the Board «ἦτο δυνατὸν νὰ ἐπηρεάσῃ τὴν κρίσιν αὐτοῦ καὶ δὲν ἦτο νόμιμος» (" could possibly affect its judgment and was not lawful ").

The above Decision was applied in Decision 1451/1954 of the Council of State (vol. 1954Γ, p. 1782 at p. 1783). There a bakery permit was annulled because in the appropriate committee participated a close relative of the person to whom such permit was issued.

Decision 1187/1950 was followed in Decision 351/1956 of the Council of State (vol. 1956A, p. 471 at p. 473) ; that was a case where one of the members of the collective body concerned had personal reasons to be disposed unfavourably towards the applicant. As it turned out, however, he did not vote against the applicant; it was held, nevertheless, that «Τὸ γεγονὸς ὅτι ὁ Κ.Δ., μετασχὼν εἰς τὴν σύνθεσιν τῆς ἐπιτροπῆς, δὲν κατεψήφισεν τὸν αἰτοῦντα, δὲν ἀρκεῖ ἵνα καλύψῃ τὴν ἐκ τοῦ ἀνωτέρου λόγου πλημμέλειαν, ἐφ' ὅσον ἐκ τῆς συμμετοχῆς τοῦ μέλους αὐτοῦ ἡ 'Επιτροπὴ συνετέθη ἐν πάσῃ περιπτώσει κακῶς». (" the fact that K.D., having participated as a member of the Committee, did not vote against the applicant, is not sufficient to offset the defect arising, as above, because through the participation of such member the Committee, was in any case composed improperly ").

The same Decision, 1187/1950, was followed also in Decision 1286/1957 of the Council of State (vol. 1957B, p. 657) ; it is held there that the *sub judice* act is rendered void, through the participation of a disqualified member in a collective body «χωρὶς νὰ εἶναι ἀνάγκη νὰ ἀποδειχθῇ, ὅτι ἡ ληφθεῖσα ἀπό-

φασις ὑπῆρξεν πράγματι μεροληπτική». (" without any need to prove that the decision taken was in fact partial ").

The relevant principles are to be found set out, also, in the officially issued " Conclusions from the Jurisprudence of the Council of State " in Greece (1929–1959) at pp. 111–112. It is confirmed there that the participation of a disqualified member involves the invalidity of the resulting decision, even if it did not result because of the vote of such member.

I am of the opinion that the principle adopted in Greece, as set out above, gives expression to basic requirements of natural justice and is a general principle of administrative law constituting a most necessary and useful rule of proper administration and, as such, it ought to be followed by this Court too.

As already stated, it is common ground that the late Mr. Michaelides presided for some time at the meeting of the Commission of the 24th April, 1962, whilst candidates for the post in question were being interviewed (and as it appears from the minutes *exhibit* 2, it is on that day that both the applicant and all the Interested Parties were interviewed) and he also took part in the vote on the 14th June, 1962, when the promotions of the Interested Parties were decided upon.

It is not also in dispute that the late Mr. Michaelides was related to applicant and to the Interested Parties Papadouris and Michael to the extent stated already earlier in this judgment.

I do not think it necessary to go into the question of which are the exact degrees of kindred which would disqualify a member of a collective organ from taking part in its proceedings in a matter relating to one of his relatives. This would have been necessary to do if the Interested Parties *only* were related to Mr. Michaelides and a non-relative was applying for annulment of their promotions. Then I would have had to resolve the aforesaid question, a question which is not governed, as far as I am aware, by any express provision in Cyprus.

In the circumstances of the present case, the position is rather different. Not only the aforesaid two Interested Parties were related to Mr. Michaelides, in varying degrees, but also the applicant himself. In deciding on the promotions in question, the Commission had to adjudi-

cate not only between competing claims to promotion of relatives of Mr. Michaelides and of other candidates, not related to him, but it also had to decide on competing claims *inter se* of three relatives of his, the applicant and the two Interested Parties, Papadouris and Michael.

All the aforementioned three candidates were, in my opinion, sufficiently related to the late Mr. Michaelides, by present-day Cyprus realities and standards—of which I take judicial notice—so as to render it proper to treat them, for the purposes of this case, as close, rather than distant, relatives of his.

In the light of the above, and in all the circumstances of this case, applying the principle in force in Greece, as found to be properly applicable also in Cyprus, I have come to the conclusion that the paramount requirements, *viz.* that the composition of a collective body should appear to guarantee an independent judgment and should be such as not to shake the confidence of the subject in the impartiality of such organ, have been defeated to such an extent through the participation in the proceedings of the Commission of a relative of three *inter se* competing candidates, so as to render its composition for the relevant purpose defective and its eventual decision in the matter invalid, in so far as the two Interested Parties, Papadouris and Michael, are affected.

I have reached this conclusion with certainty concerning the legal and factual aspects thereof but also with some considerable degree of moral reluctance, because I am satisfied that there is no reason at all to doubt the good faith of the late Mr. Michaelides in participating in the proceedings of the Commission concerning the said promotions. I have also no reason at all to doubt the good faith of the remaining members of the Commission in allowing such participation. It is apparently a case where Mr. Michaelides and the remaining members, including the Chairman of the Commission, did not address their minds to the question of specific disqualification of Mr. Michaelides. They have been working under the severe handicap of the absence of any legislative provision regulating such matters as disqualification of members, for the purpose of internal proceedings of the Commission, and cognate matters affecting the discharge of the duties of the Commission. It is not, therefore, difficult to understand how a matter of the nature dealt with in this case, may have been overlooked. On the other hand, I have no doubt

that, in spite of the undisputed good faith of all concerned, it was essential to give effect to the principle of proper administration expounded in this judgment. It is significant in this connection to note the provisions of Article 124.6 (2) of the Constitution which, though not directly applicable to the problem in hand, they indicate the need for members of the Commission to be entirely independent of all ties in approaching matters calling for consideration by them.

Counsel for respondent has also agreed, in a fair discharge of his duty to the Court, that applicant was entitled to succeed on ground (*a*). In doing so, he relied on the relevant principle applicable in France as set out in " Contentieux Administratif " by Odent, vol. 3, p. 903.

In France this principle, being practically the same as that obtaining in Greece, is applied with some degree of elasticity. It was decided, for example, in 1952 in the case of *Decharme* that the administrative act concerned need not be annulled if in the circumstances of a case, it appears that the presence of a disqualified member was not of such a nature as to exert an influence on the result of the vote leading to such act. But even under the French jurisprudence I have no doubt that the validity of the promotions, the subject-matter of this case, would not have been saved because of the nature of the participation in the proceedings of the disqualified member, the late Mr. Michaelides. He not only participated fully, but even to a greater extent than ordinarily in that he presided over the Commission at an essential stage of the proceedings, the interview of candidates, leading to the promotions in question. A case on the point was decided in 1954 by the French Council of State—it is the case of *Ricros*. There a member of a collective organ, who had a personal interest in the examination of somebody else's application for a professional licence, was held to be disqualified and his participation led to the annulment of the decision taken in the matter, though he had not taken part in the vote at all, merely because he had presided at the meeting at which the application was considered. Furthermore, the collective organ involved in the Ricros case was not even the body which would have issued the licence in question but only an organ on the opinion of which the licensing body would have acted.

I am, therefore, of the opinion that quite properly counsel for the Republic, while basing himself on the principles in force in France, has stated that the participation of the late Mr. Michaelides was a proper ground for annulment of he promotions concerned.

In deciding that it was proper in this case to annul the said two promotions I have kept in mind the principle, also applicable in Greece, that a member need not be treated as disqualified if, as a result, the remaining members cannot constitute a quorum (see " Conclusions from the Jurisprudence of the Council of State " in Greece, at p. 112). Without going into the whole question of the quorum of the Public Service Commission, I am satisfied that the absence of one member, the late Mr. Michaelides, at its meeting of the 14th June, 1962, would not have prevented the formation of a quorum. There is nothing in the relevant Articles of the Constitution, 124 and 125, to necessitate that the quorum of the Commission should be its full membership. As no specific provision on the quorum has been made in the Constitution or by any legislation, the matter of quorum of the Public Service Commission is to be governed by the general principles applicable to quorum of collective organs, into which I need not go at length in this judgment. It suffices to say that they do not require the presence of *all* members of a collective organ for the purpose of forming a quorum. Actually, the provisions of Article 124.7 tend to negative any suggestion that the quorum of the Commission is its full membership, because in the said provisions the term " may " is employed with regard to the power of appointing acting members of the Public Service Commission, instead of the term " shall " which would otherwise have had to be employed.

For all the above reasons, I have reached the conclusion that the promotions of the Interested Parties, Papadouris and Michael, to the post of Forest Ranger should be declared to be null and void on ground (*a*) put forward by counsel for applicant.

There remains now to consider the validity of the promotion of Interested Party Hadji Yiannis, who on the basis of the statement of case, does not appear to have been related to the late Mr. Michaelides and, therefore, is not affected by the disqualification of Mr. Michaelides for the purpose of the relevant proceedings of the Commission. It is, therefore, necessary to go into ground (*b*) of counsel for applicant.

Though it is not stated in the relevant minutes, it is not disputed that on the 24th of April, 1964, the Chairman of the Public Service Commission absented himself from such meeting for some time, not less than an hour, and, in the meantime, Mr. Michaelides was requested by him to

preside over the meeting. It was at such meeting that the applicant and the three Interested Parties were interviewed for promotion.

Counsel for applicant has argued that in view of the provisions of Article 125.2, which state that the Chairman " shall preside " at the meetings of the Public Service Commission, the relevant proceedings and the eventual decision reached on the 14th June, 1962, are invalidated through the absence of the Chairman and the presiding over the Commission by a member nominated by the Chairman, and not even elected by the members for the purpose.

There is no provision in the relevant Article of the Constitution concerning the case of absence of the Chairman, as far as presiding over the Commission is concerned, nor has this matter been regulated by legislation. In approaching this question, it should be borne in mind that this is a matter of a temporary absence from a meeting and not of incapacity of the Chairman of the Commission to discharge its duties.

It is to be resolved in the light of general principles applicable to the conduct of proceedings of collective bodies. One such principle is to be found in a decision given by the Greek Council of State, 1323/1954, (vol. 1954B, p. 1625). That was a case where the relevant legislation stated who should preside over the collective organ concerned and who was to replace him in case of absence. There was no provision made as to who would preside in case of absence of both. It was held that, in accordance with the general principles obtaining in the matter, the person to preside should be the senior of the members present. In the case of the Public Service Commission, it is to be noted that the late Mr. Michaelides was one of the members of the Commission originally appointed, when it was constituted, on the 16th August, 1960. (See the official *Gazette* of the 16th August, 1960). So, he ranked in seniority equally with all members of the Commission who were present and had been appointed also on that date. There being, therefore, no question of any particular member being the senior in the absence of the Chairman, in my opinion, it was quite proper for theChairman to designate one of the equally senior members, who had been appointed with him on the 16th August, 1960, to act for him *pro tempore*.

It is significant that this temporary acting for the Chairman has not even been recorded in the minutes, which reasonability tends to show that it was impliedly consented to by the remaining present members of the Commission, be-

cause otherwise if an objection were to have been raised the minutes would have shown that the matter was regulated by a decision taken in this respect. It may, therefore, be taken that the nomination of the late Mr. Michaelides to act for the Chairman for a short while was impliedly approved by the Commission unanimously in the exercise of its inherent powers to regulate its proceedings at a meeting.

In my opinion the provisions of Article 125.2 do not exclude a member from presiding over the Commission, once he was authorised to do so in the appropriate manner. This is supported by the aforesaid decision of the Greek Council of State, where, as already stated, it was clearly held that the senior member of a collective body could preside, in the absence of those who were expressly designated by law as the Chairman and substitute Chairman of the body concerned. A provision concerning who is to preside, with absence of provision of what is to happen as regards presiding in case of absence of the Chairman, cannot be taken as excluding proper arrangements for a *pro tempore* chairman of a meeting.

For these reasons I find that ground (*b*) of applicant cannot succeed and, therefore, the promotion of Interested Party Hadji Yiannis is not invalid on this ground either.

It is now up to the Public Service Commission to reconsider the matter of filling, by promotion, the two posts of Forest Ranger, to which Interested Parties Papadouris and Michael were promoted and whose promotions have now been annulled. As such promotions have been annulled not on their merits but due to the defective, as found, composition, for the purpose, of the Commission, there is nothing to prevent the said two Interested Parties from being duly considered again for promotion. Of course, applicant and any other of the then candidates are also entitled to consideration for promotion to such posts.

In reconsidering the filling of the said two promotion posts, the matter has to be considered on the basis of the situation prevailing on the 14th June, 1962 (see in this respect, *Papapetrou and The Republic*, 2 R.S.C.C. 61 at p. 71). In view of this, if the Public Service Commission were to decide, in a proper exercise of its powers, to promote again the two Interested Parties to the two vacancies concerned, the question might arise regarding the date of the effect of its new decision. Though on principle an administrative act cannot be applied retrospectively, it may fall to be examined by the Commission whether this is a case which comes

under a recognized exception to such principle, as it is to be found in the aforesaid " Conclusions from Jurisprudence of the Council of State ", at p. 197, as well as in decisions of the Greek Council of State 1016/1954, 617/1954. At this stage, I am not pronouncing at all on this matter. I am only drawing attention to it as being relevant, having held that reconsideration of the filling of the two promotion posts should be made on the basis of the situation prevailing when the original decision in respect of them was taken. Needless to stress, that the Commission though entitled, is not bound to reappoint the same persons.

As regards costs, I have decided, in all the circumstances of this case, to make no order as to costs, bearing especially in mind also that costs had to be incurred by respondent through an adjournment and new pleadings which were made necessary by an application for amendment of a mis-description in the original application.

Order in terms. No order as to costs.