

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ELEFThERA PANKYPRIOS OMOSPONDIA
PROSOPIKOU ARCHIS ELEKTRISMOU (KLADOS
LEMESOU) AND ANOTHER,

Applicants,

and

THE MUNICIPAL CORPORATION OF LIMASSOL,

Respondents.

(Case No. 8/66).

ELEFThERA
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OMOSPONDIA
PROSOPIKOU
ARCHIS
ELEKTRISMOU
(KLADOS
LEMESOU)
AND ANOTHER
v.
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OF LIMASSOL

Municipalities—Municipal Corporations—Licence “to carry on calling or profession” under section 156 of the Municipal Corporations Law, Cap. 240—Whether or not an officer permanently in the service of the Electricity Authority of Cyprus and in receipt of an annual salary is “an officer or servant permanently in the service of the Government” within section 159(1) of the Law—The Municipal Corporations Law, Cap. 240, sections 156(d), 157(1)(i), 158, 159(1); The Electricity Development Law, Cap. 171, section 11(1)(2); Article 122 of the Constitution and the definition thereunder of the words “public service”.

Taxation—Licence “to carry on calling or profession” within the municipal limits—Fees—What are the appropriate fees and, generally, what is the position in that regard of officers or servants permanently in the service of the Electricity Authority of Cyprus—See above.

Electricity Authority—An independent statutory authority or public corporation established by statute—Its officers or servants cannot be said to be “in the service of the Government” under sections 156(d) and 159(1) of Cap. 240 (supra).

Licence—Licence to “carry on calling or profession” within the municipal limits—Fees—Position of “officers and servants permanently in the service of the Government”—Or in the service of the Electricity Authority of Cyprus—See above.

Public Corporations—Independent statutory authorities or public

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corporations established by statute—See above.

Words and Phrases—“Public Service” in Article 122 of the Constitution—“Officers and servants in the service of the Government” in sections 156(d) and 159(1) of the Municipal Corporations Law, Cap. 240—“Members, officers and servants of the Authority” in section 11(1) and (2) of the Electricity Development Law, Cap. 171.

Public service—See above.

Officers and servants in the service of the Government or in the service of the Electricity Authority—See above.

The second Applicant was at all material times to this case a Wayleave Officer permanently in the service of the Electricity Authority, carrying on that occupation in Limassol town. This application raises a single question of substance *viz.* whether or not this Applicant is “an officer or servant permanently in the service of the Government” within section 159(1) of the Municipal Corporations Law, Cap. 240. If he is, then he would be liable to what is called “professional tax” under Part II of the Tenth Schedule of the said Law, Cap. 240. If he is not, the Respondent would be entitled to determine the fee (tax) payable by him under Part I of the Tenth Schedule, under which a higher fee may be fixed than is payable under Part II thereof, which is precisely what the Respondents did in this case by their decision complained of by this recourse.

The case for the Applicants on this question is based partly on Article 122 of the Constitution and partly on section 11 of the Electricity Development Law, Cap. 171.

In Article 122 “public service” is defined as including: “service under the Cyprus Inland Telecommunications Authority.....and the Electricity Authority of Cyprus”.

On the other hand section 11(1) and (2) of the Electricity Development Law, Cap. 171, provides:-

“(1) All members, officers and servants of the (Electricity) Authority shall be deemed to be employed in the public service within the meaning of the Criminal Code.

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(2) The Public Officers Protection Law (now Cap. 313) shall apply to any action, prosecution or other proceedings against the Authority, or against any member, officer or servant thereof in respect of any act, neglect or default done or committed by him in such capacity."

The material parts of sections 156, 157, 158 and 159 of the Municipal Corporations Law, Cap. 240 are quoted *post* in the judgment of the Court.

Dismissing the recourse, the Court:-

Held, (1). It is clear that sub-section 1 of section 11 of Cap. 171 (*supra*) affects only the position of "members, officers and servants of the Authority" in relation to the Criminal Code, while sub-section 2 simply extends to such persons the provisions of the Law therein referred to and that neither sub-section can have any bearing on the meaning of the words "officers and servants in the service of the Government" in section 159(1) of the Municipal Corporations Law Cap. 240.

(2) Coming now to the definition of "public service" in Article 122 of the Constitution (*supra*), it is clear that Article 122 is solely concerned with regulating the allocation of posts in the "public service" as between the Greek and Turkish communities, providing for the establishment of a Public Service Commission and defining its functions; and therefore it is only in respect of such allocation and the functions of the Commission that persons serving under the Electricity Authority are affected thereby.

(3) It follows that neither Article 122 of the Constitution nor section 11 of Cap. 171 (*supra*) can have the effect of extending the meaning of the words in question in section 159(1) of the Municipal Corporations Law, Cap. 140 (*supra*) to the second Applicant.

(4) Thus, the aforesaid words in that section 159(1) must be construed without reference to either of the provisions relied upon by counsel for the Applicants. Now the Electricity Authority being a body corporate established by statute (*viz.* Cap. 171) as an independent statutory authority or public corporation, its officers and

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servants are not “in the service of the Government” within section 159(1) of Cap. 240. Consequently the recourse fails.

Application dismissed with costs.

Recourse.

Recourse for a declaration, *inter alia*, that the Employees of the Electricity Authority in Limassol and elsewhere are or are deemed to be officials and/or servants permanently in the service of the Government of the Republic within the meaning of section 159 of the Municipal Corporations Law Cap. 240 and of Article 122 of the Constitution of the Republic.

M. Houry, for the Applicants.

J. Potamitis for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

STAVRINIDES, J.: It is common ground that the second Applicant is, and since November, 1964, has been, a Wayleave Officer permanently in the service of the Electricity Authority of Cyprus (hereafter “the Authority”) at an annual salary and that he is, and since that time has been, carrying on that occupation in Limassol town. By s. 156 of the Municipal Corporations Law, Cap. 240

“No person shall, within any municipal limits, carry on, exercise or practise any business, trade, calling or profession for profit unless he has obtained a licence so to do in accordance with the provisions of this Law: Provided that —

.....
(d) officers and servants permanently in the service of the Government of the (Republic). . . . and in receipt of an annual salary shall not be required to obtain such licence but shall pay the fees hereinafter provided”.

Section 157(1) reads:

“Any person desiring to carry on, exercise or practise, for profit, any business, trade, calling or profession within any municipal limits shall apply to the (municipal committee) for a licence and the (committee) shall

determine the fee payable therefor, not exceeding the appropriate fee set out in Part I of the Tenth Schedule to this Law:

Provided that—

.....
(c) subject to the provisions of section 159 of this Law, nothing in this section contained shall apply to the officers and servants to which section 159 relates”.

Section 158 reads:

“If any person fails to apply to the (committee) for a licence, as in section 157 of this Law provided within one month of his having commenced or recommended to carry on, exercise or practise any business, trade, calling or profession, the (committee) may determine the fee payable by such person, not exceeding the appropriate fee set out in Part I of the Tenth Schedule to this Law, and enter his name in the register of trade licences and the decision of the (committee) shall be final and conclusive”.

Section 159 consists of two sub-sections, of which the second one has no relevance to this case and the first, so far as relevant, reads:

“Officers and servants permanently in the service of the Government of the (Republic)... and in receipt of an annual salary shall pay to the municipal corporation within the limits of which they usually perform their duties the fees set out in Part II of the Tenth Schedule to this Law”.

It is agreed, too, that the second Applicant never applied to the committee for a licence to carry on his occupation in 1965 and that on April 5 of that year the committee “determined the fee payable by him” with reference to Part I of Sch. 10, under which a higher fee may be fixed than is payable under Part II thereof. The second Applicant is a member of the first Applicants, and both Applicants seek

(a) “A declaration that the employees of (the Authority) in Limassol and elsewhere are or are deemed to be official and/or servants permanently in the service of the Government of the Republic within the meaning of s.159 of the Municipal Corporations

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Law, Cap. 240, and of Art. 122 of the Constitution of the Republic of Cyprus and, as such, are not bound to obtain a licence from the (municipal committee) but are only liable to pay the fees set out in Part II of Sch. 10 of . . . Cap. 240' .

- (b) "a declaration that the decision of the Respondents communicated to the secretary of Applicants 1 dated December 14, 1965, and signed by the President of the (municipal committee) of Limassol is contrary to the provisions of s. 159 of Cap. 240 and of Art. 122 of the Constitution and is made in excess or in abuse of the powers vested in them and is null and void and of no effect whatsoever".

Counsel for the Respondents in his opposition objected that this application has been made out of time and further, so far as the first Applicants are concerned, that they had no legitimate interest within Art. 146.2 of the Constitution to bring, or join in, the proceedings. These two matters apart, the application raises a single question of substance, viz. whether or not the second Applicant is "an officer or servant permanently in the service of the Government" within s. 159(1) of Cap. 240. The case for the Applicants on this question is based partly on the fact that in Art. 122 of the Constitution "public service" is defined as including

"service under the Cyprus Inland Telecommunications Authority, the Cyprus Broadcasting Corporation and the Electricity Authority of Cyprus"

and partly on s. 11 of the Electricity Development Law, Cap. 171, which reads:

- (1) "All members, officers and servants of the Authority shall be deemed to be employed in the public service within the meaning of the Criminal Code.
- (2) The Public Officers Protection Law shall apply to any action, prosecution or other proceedings against the Authority, or against any member, officer or servant thereof in respect of any act, neglect or default done or committed by him in such capacity".

It is clear that sub-s. (1) only affects the position of "members, officers and servants of the Authority" in relation to the Criminal Code, while sub-s. (2) simply extends to such

persons the provisions of the Law therein referred to and that neither sub-section can have any bearing on the meaning of the words "officers and servants in the service of the Government" in s. 159(1) of Cap. 240. Coming now to the definition of "public service" in Art. 122 of the Constitution, that, as Mr. Potamitis for the Respondents pointed out, is subject to the opening words of the Article, which read

"In this chapter the following expressions, unless the context otherwise requires, mean".

Now Art. 122 is solely concerned with regulating the allocation of posts in the "public service" as between the Greek and Turkish communities, providing for the establishment of a Public Service Commission and defining its functions; and therefore it is only in respect of such allocation and the functions of the Commission that persons serving under the Authority are affected thereby. It follows that neither that definition nor s. 11 of Cap. 171 can have the effect of extending the meaning of the words in question to include the second Applicant.

Thus the words must be construed without reference to either of the provisions relied upon. Now the Authority being a body corporate, established by statute as an independent statutory authority or public corporation, its officers and servants are not "in the service of the Government" within s. 159(1) of Cap. 240.

In his address counsel for the Respondents said that "he did not press" the objection about the application being out of time. Of course both the limitation of time contained, and the existence of legitimate interest required, by paras. 2 & 3 respectively of Art. 122 of the Constitution are matters which cannot be waived, whether expressly or by implication. But here I need not discuss either of them because for the reasons given the application must fail.

Application dismissed with £12 against costs.

Order in terms.

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