

1968
Sept. 12

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ANDREAS
KASAPIS
v.
COUNCIL FOR
REGISTRATION OF
ARCHITECTS
AND CIVIL
ENGINEERS

[Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS KASAPIS,

Applicant,

and

THE COUNCIL FOR REGISTRATION OF
ARCHITECTS AND CIVIL ENGINEERS,

Respondents.

(Case No. 182/67).

Architects—“Architect by profession”—The Architects and Civil Engineers Law, 1962 (Law No. 41 of 1962) as amended by Law No. 7 of 1964, section 9(1)(A)(i)(ii)(iii)—Refusal of Respondents to enrol Applicant as “architect by profession”, on the ground that he was not engaged during the statutory period in a “responsible capacity” with an architect or civil engineer etc. etc. as required by sub-paragraph (ii), supra—Misdirection of Respondents regarding the correct interpretation of the phrase “responsible capacity”—Consequent failure of the Respondents to apply correctly the law to the undisputed facts of the case—See, also, herebelow.

Words and Phrases—Engaged “in a responsible capacity”, in section 9(1)(A)(ii) of the aforesaid Law—Meaning and effect—The phrase relates to the nature of the duties carried out by the employee and has nothing to do with legal liability.

Administrative Law—Misdirection as to the correct meaning and effect of a statutory provision—Failure of the administrative organ or authority to apply correctly the law to the undisputed facts of the case.

By this recourse under Article 146 of the Constitution the Applicant challenges the validity of the Respondents' decision whereby they rejected his application for enrolment as an “Architect by profession” under the Architects and Civil Engineers Law, 1962 (Law No. 41/62) as amended by law No. 7 of 1964.

The recourse is based on the ground that the refusal of the Respondents contravenes section 9(1)(A)(i)(ii)(iii) of the said Law. It is not disputed that Applicant fulfils the re-

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quirements set out in sub-paragraphs (i) and (iii); what is disputed by the Respondents relates to the requirements under sub-paragraph (ii), namely, they did not consider that the nature of Applicant's work for the statutory period of seven years with architect Mr. St. was such as to satisfy them that he was engaged in a "responsible capacity" under the said architect as required by section 9(1)(A)(ii) of the Law (The full text of the material parts of section 9 are quoted in the Judgment, post). The reason which led the Respondents to their said conclusion is as follows: "Responsible capacity" means according to them that the employee must be in absolute charge and must not be answerable to any person, including his employer, as in the present case where Applicant's work was checked by the aforementioned architect Mr. St.

In annulling the decision complained of, the Court:

Held, (1). I cannot for one moment agree with this view nor do I think that sub-paragraph (ii) (*supra*) is capable of the construction placed upon it by the Respondents.

(2) This sub-paragraph clearly makes, provision for employees working with a person entitled to be registered as an Architect or Civil Engineer (such as the aforesaid architect Mr. St.) or in the service of Government etc. and it is difficult to imagine a situation where such an employee would not be subject to the directions and checking of his employer and where the employer, the Architect in the present case, would not be himself liable either in contract or in tort to the owner of the construction.

(3) In my view the words "in a responsible capacity" relate to the nature of the duties of the employee and have nothing to do with legal liability. I am, therefore, satisfied that the Respondents misdirected themselves in law and, as a result, they failed to apply correctly the law to the undisputed facts of the case.

Decision complained of annulled.

Recourse.

Recourse against the decision of the Respondents not to grant Applicant's application for admission or enrolment as an architect by profession.

A. Triantafyllides, for the Applicant.

I. Loizidou (Mrs.), for the Respondent.

Cur. adv. vult.

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The following Judgment was delivered by:—

LOIZOU, J.: By this recourse the Applicant seeks a declaration that the decision of the Respondents not to grant Applicant's application for admission or enrolment as an Architect by profession is null and void and of no effect whatsoever.

The Application is based on the ground that the Respondents acted contrary to section 9 of the Architects and Civil Engineers Laws 1962–1964 (41/62 and 7/64). The relevant part of this section is sub-section (1)(A)(i)(ii)(iii) and it reads as follows:

«9.—(1). 'Ανεξαρτήτως παντός έν τῷ παρόντι Νόμῳ διαλαμβανομένου, πᾶς ὅστις εἶναι πολίτης τῆς Δημοκρατίας δικαιούται ὅπως τῇ ὑποβολῇ αἰτήσεως πρὸς τὸ Συμβούλιον, έν τῷ νενομισμένῳ τύπῳ καί τῇ καταβολῇ τοῦ νομίμου τέλους, τῷ παρασχεθῆ ἄδεια ἵνα καταστή:

(A) 'Αρχιτέκτων ἐξ ἐπαγγέλματος —

ἐάν τὸ Συμβούλιον πεισθῆ ὅτι εἶναι καλοῦ χαρακτήρος καί ὅτι —

(i) κέκτηται ἐπαρκεῖς γνώσεις περὶ τὴν ἐργασίαν τοῦ 'Αρχιτέκτονος ἢ Πολιτικοῦ Μηχανικοῦ καί

(ii) κατὰ τὴν ἡμερομηνίαν ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου ἐνήσκει καλῇ τῇ πίστει καί προσωπικῶς έν τῇ Δημοκρατίᾳ τὸ ἐπάγγελμα τοῦ 'Αρχιτέκτονος ἢ τοῦ Πολιτικοῦ Μηχανικοῦ, ἢ έν τινι ὑπευθύνῳ ἰδιότητι εἰργάζετο παρὰ προσώπῳ δικαιουμένῳ νὰ ἐγγραφῆ ὡς 'Αρχιτέκτων ἢ Πολιτικός Μηχανικός, ἢ έν τῇ ὑπηρεσίᾳ τῆς Κυβερνήσεως ἢ ἐτέρου δημοσίου ὀργανισμοῦ ἢ ἀρχῆς καί

(iii) εἰργάζετο οὕτω δι' ἐπτὰ τοῦλάχιστον ἔτη πρὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου.»

It is not disputed that Applicant fulfils the requirements set out in sub-paragraphs (i) and (iii); what the Respondents dispute relates to the requirements under sub-paragraph (ii).

The undisputed facts of the case are that the Applicant

was since the 1st January, 1955 *i.e.* for a period of almost 12 years employed by Mr. P. Stavrinides, a qualified Architect; he was in charge of the drawing section of the office and he was entrusted both with the drawing of plans and the supervision of the construction of all kinds of structures.

It may be stated at this stage that this is the third recourse filed by the Applicant; but I do not think that there is any point in going into this matter in any detail except to say that the decision of the Respondents in one of the two other recourses was declared null and void on a ground unconnected with the ground under consideration in this case.

As it appears from the minutes (*exhibit 2*), the decision in the present case was taken by the Respondents on the 19th July, 1967 and was communicated to the Applicant by the letter dated 12th September, 1967 (*exhibit 1*).

The Respondents rejected Applicant's application on the ground that they did not consider that the nature of his work with Mr. Stavrinides was such as to satisfy them that the Applicant was engaged in a "responsible capacity" under Mr. Stavrinides as required by section 9(1)(A)(ii) of the Law. The reason that led Respondents to this conclusion is very clearly stated both in the minutes of the meeting and in the letter addressed to the Applicant. Paragraph 3 of the letter, *exhibit 2*, reads as follows:

«Ο κ. Σταυρινίδης ανέθετε εις ὑμᾶς νὰ κάμνετε ὄλην τὴν ἀπαιτουμένην σχεδιαστικὴν ἐργασίαν διὰ κάθε ἀντίστοιχον ἀρχιτεκτονικὴν μελέτην, ἀλλὰ ἡ ἐργασία σας ἠλέγχετο καὶ ἐγένετο ὑπὸ τὴν εὐθύνην τοῦ κ. Σταυρινίδη ὁ ὅποιος κατ' οὐσίαν καὶ κατὰ τύπον ἦτο ὁ μόνος ὑπεύθυνος ἀπέναντι τοῦ ἐργοδότη ἰδιοκτῆτου τῆς οἰκοδομῆς. Ὁ κ. Σταυρινίδης σᾶς ανέθετε νὰ κάμνετε ἐπὶ τόπου ἔλεγχον τῆς ἐκτελουμένης βάσει τῶν ἀρχιτεκτονικῶν σχεδίων ἐργασίας, ἀλλὰ ὅπως εἰς τὰ σχέδια, οὕτω καὶ εἰς τὴν ἐπίβλεψιν, τὴν εὐθύνην ἀπέναντι τοῦ ἐργοδότη εἶχεν ὁ κ. Σταυρινίδης.»

The same contention was made by learned counsel for the Respondents at the hearing of the case. "Responsible capacity", it was submitted, means that the employee must be in absolute charge and must not be answerable to any person, including his employer, as in the present case where Applicant's work was checked by Mr. Stavrinides.

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I cannot for one moment agree with this view nor do I think that sub-paragraph (ii) is capable of the construction placed upon it by the Respondents; this sub-paragraph clearly makes provision for employees working with a person entitled to be registered as an Architect or Civil Engineer or in the service of the Government or other public organ or authority and it is difficult to imagine a situation where such an employee would not be subject to the directions and checking of his employer and where the employer, the Architect in the present case, who would no doubt be the contracting party, would not be himself liable either in contract or in tort to the owner of the construction or to anybody who had a claim in connection with the building contract.

In my view the meaning of the words "in a responsible capacity" relate to the nature of the duties of the employee and have nothing to do with legal liability. I think that the mere fact that the Applicant may not have been personally liable in law to the owner of the house under construction or that his employer had the overall control of the building works does not in itself render his capacity any the less responsible.

I agree with learned counsel for the Applicant that the Respondents have misdirected themselves regarding the correct interpretation of the law; I am further satisfied that as a result they could not and did not correctly apply the law to the undisputed facts of the case and that for this reason this recourse must succeed and the decision of the Respondents must be declared null and void. (See "The Law of Administrative Acts" by Stassinopoulos (1951) p. 249).

Decision complained of is hereby declared null and void; the Respondents to pay £10 towards Applicant's costs.

*Order, and order as to costs,
in terms.*