

[LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOIZOS ARGYRIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE SENIOR INSURANCE OFFICER, MINISTRY  
OF LABOUR AND SOCIAL INSURANCE,

*Respondent.*

1969  
June 19  
—  
LOIZOS  
ARGYRIDES  
v.  
REPUBLIC  
(SENIOR  
INSURANCE  
OFFICER  
MINISTRY  
OF LABOUR  
AND SOCIAL  
INSURANCE)

(Case No. 396/68).

*Social Insurance—Self-employed person—Section 2 of the Social Insurance Law, 1964 (Law No. 2 of 1964)—Statement by the Applicant to an officer of the Respondent Ministry to the effect that he is invalid and he is not doing any work—Subsequent statement by him, on refusal of his application for pension, to the effect that his first statement was false—Respondent's decision, taken under section 11(1) of the Social Insurance Law, 1964 (supra), that Applicant was not a self-employed person within said section 2, and that as a result, under the provisions of section 13(3)(c) of that Law, Applicant's contributions to the Social Insurance Fund for the period from 5th October, 1964 to the 26th July, 1967, would not be taken into account for pension purposes or for any other benefit—Not only reasonably open to Respondent but on the actual evidence he could hardly have reached any other decision.*

*Words and Phrases—"Self-employed person" in section 2 of the Social Insurance Law, 1964 (Law No. 2 of 1964).*

**Recourse.**

Recourse against the decision of the Respondent to take no account of the contributions made by Applicant during the period 5th October, 1964 to 26th September, 1967 and against a decision to the effect that Applicant was not a self-employed person within the provisions of the Social Insurance Law, 1964 (Law 2 of 1964).

*Ch. Kyriakides for L. Papaphilippou, for the Applicant.*

*L. Loucaides, Senior Counsel of the Republic, for the Respondent.*

*Cur. adv. vult.*

The following judgment was delivered by:—

LOIZOU, J.: The relief claimed by the Applicant in the present recourse is a declaration to the effect that Respondent's decision to take no account of the contributions made by the Applicant during the period 5th October, 1964, to 26th September, 1967, and/or his decision that the Applicant was not a self-employed person within the provisions of the Social Insurance Law 1964 (No. 2/64) is illegal and/or without any legal effect.

The facts of this case are briefly as follows:

The Applicant is 74 years of age and a resident of Pedhoulas village. At the beginning of 1965 he applied for an insurance card; his application (*exhibit 5*) was accompanied by a certificate by the Chairman of the Village Commission dated 1st January, 1965, to the effect that the Applicant was engaged in farming out of which he made his living. In view of the certificate the application was approved without any inquiry being carried out with a view to ascertaining whether the Applicant was in fact a self-employed person within the meaning of the Law.

On the 17th September, 1967, the Applicant completed the prescribed form (*exhibit 6*) claiming old age pension as a self-employed person and an officer of the Ministry of Labour and Social Insurance visited Applicant's village on the 10th December, 1967, in order to inquire into the case. He took a statement from the Applicant (*exhibit 7*) and I consider it pertinent to set out this statement in full. It reads as follows:—

« Έγώ ό κάτωθεν ύπογεγραμμένος Λοίζος Άργυρίδης εκ Πεδουλά, αριθμός ταυτότητας 195665, δηλώ ότι είμαι άνύμ-  
πυρος, και δέν εργάζομαι από τό 1960. Έχω εις τήν κατο-  
χήν μου 2-3 κομματούδια περβόλι που αφήνουν άπολαβές  
καμιά £70-80 τόν χρόνο. Τά κτήματα τά μισταρώνω και  
κάμνου μου τα. Έγώ δέν μπορώ νά εργασθώ ούτε νά έπι-  
βλέψω. Έπήγαινε ή γυναίκα μου, αλλά αυτή άρρώστησε  
και εκείνη είναι στο στρώμα. Μένω μαζί με τήν γυναίκα

μου και την κόρη μου που είναι ελεύθερη. "Αν μὲν μοῦ δοθῆ  
καὶ σύνταξις τί θὰ κάμωμε δύο κουτσοὶ στὸ στρῶμα».

1969  
June 19

On the 29th April, 1968, the Respondent, the Chief Insurance Officer, by his letter *exhibit 8* notified the Applicant that in exercise of his powers under section 11(1) of the Social Insurance Law 1964, after an inquiry and in the light of the evidence in his possession, he had decided that as from the 5th October, 1964, the Applicant was not a self-employed person and that as a result, under the provisions of section 13(3)(c) of the Law, his contributions to the Social Insurance Fund for the period 5th October, 1964, to 26th July, 1967, would not be taken into account for pension purposes or for any other benefit as having been made contrary to the provisions of the said law.

LOIZOS  
ARGYRIDES  
v.  
REPUBLIC  
(SENIOR  
INSURANCE  
OFFICER  
MINISTRY  
OF LABOUR  
AND SOCIAL  
INSURANCE)

On the 28th May, 1968, the Applicant wrote to the Chief Insurance Officer the letter *exhibit 9* requesting that his case be reconsidered on the ground that the information obtained by the officer of the Ministry was wrong. The Applicant goes on to say that both he and his wife own immovable property and that he is engaged in farming and lives from the income of his property; that he is a member of the Co-operative Society of his village and that he pays all his taxes.

As a result, on the 10th September, 1968, another officer from the Ministry went to Applicant's village to make a new inquiry into his case. The Applicant made another statement to this officer in which he declares that his previous statement of the 10th December, 1967, was false. "As a matter of fact", he says in this new statement "one of my legs is artificial. I was told that if I stated that I was an invalid I would get more pension and so I declared that I was an invalid. In reality" he continues, "I have property of my own which is being cultivated by my daughter, who is unmarried, and my wife". He further states that because this property is near the village he trudges along there himself and supervises and also prunes and grafts the trees and at the season when they gather the cherries he goes every day with his wife and daughter and empties the baskets and also packs the cherries in cases and that he does the same when they gather the apples; then he delivers the fruit at a cold store at his village in his own name. During the summer, he says, he packs fruit in nylon bags which he sells to visitors at a coffee-shop. In addition, he states, he engages two or three labourers for a period of

1969  
June 19  
—  
LOIZOS  
ARGYRIDES  
v.  
REPUBLIC  
(SENIOR  
INSURANCE  
OFFICER  
MINISTRY  
OF LABOUR  
AND SOCIAL  
INSURANCE)

15 days every year. Regarding his wife's health, he explains that she was suffering with her heart at the time of the first statement, but that she has since recovered.

The same Chairman of the Village Commission who gave the certificate when he first applied for an insurance card also certified the correctness of this second statement.

As a result of this new inquiry Respondent informed the Applicant that he was not prepared to revise his previous decision. It would appear that counsel appearing for the Applicant wrote to the Respondent in connection with this case and on the 2nd November, 1968, Respondent replied by his letter *exhibit 1* informing counsel that as a result of the new inquiry it had been decided that Applicant could not be considered a self-employed person under the Social Insurance Law.

Consequently this Application was filed praying as above.

The ground of Law on which the application is based is that the Respondent acted under a misconception of facts and/or without carrying out an independent inquiry as to whether the Applicant was a self-employed person.

In support of his case Applicant produced several *exhibits* to show that he is a member of the Pedhoulas Co-operative Savings Bank (*exhibit 4*), and the Pedhoulas Cherry Growers Co-operative Society Ltd. (*exhibit 3*) and a certificate to the effect that between 1964 to 1968 he delivered to the last mentioned Co-operative Societies cherries the value of which varied from £29.500 mils to £47.—per annum (*exhibit 2*).

“Self-employed person” is defined in section 2 of the Social Insurance Law as “a person who is gainfully occupied in Cyprus and is not employed under a contract of service or apprenticeship”.

It may be stated at this stage that it is not claimed that the Applicant belongs to any other of the classes of insured persons.

The question, therefore, that arises is whether the Applicant in the present case was gainfully occupied, or occupied at all, as a farmer as alleged by him.

To sum up, here we have a man with an artificial leg who alleges that he is gainfully occupied as a farmer. He admittedly makes a statement to an officer of the Ministry to the effect

that he is an invalid and has not done any work since 1960. When his application is refused he applies for a reconsideration of his case and in a second statement he alleges that his first statement was false and that in fact he owns property which his wife and daughter cultivate and he adds that because the property is near the village he manages to go there himself and that he does some supervising, pruning and grafting and also helps with the packing of the fruit.

In the light of the above circumstances it cannot, in my view, be reasonably argued that the Respondent's decision, taken under section 11(1) of the Social Insurance Law, to the effect that the Applicant was not a self-employed person and his decision to take no account of the contributions paid by the Applicant in determining, under section 13(3), whether the Applicant was entitled to any benefit under the Law were not reasonably open to him. On the contrary one might go as far as to say that both from the point of view of credibility and on the actual evidence before him he could hardly have reached any other decision.

In the result this recourse fails and is hereby dismissed.

In the circumstances of this particular case and especially in view of the personal circumstances of the Applicant I have decided, not without considerable hesitation, to make no order as to costs.

*Recourse dismissed. No order as to costs.*

1969  
June 19  
—  
LOIZOS  
ARGYRIDES  
v.  
REPUBLIC  
(SENIOR  
INSURANCE  
OFFICER  
MINISTRY  
OF LABOUR  
AND SOCIAL  
INSURANCE)