

1969
Dec. 29

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

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ANDREAS
MELETIOU
v.
REPUBLIC
(MINISTER
OF INTERIOR)

ANDREAS MELETIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent,

(Case No. 284/69).

Military Service—Exemption—Refusal—Application for exemption on account of more than three dependants—Section 4(3)(f) of the National Guard Laws (from No. 20 of 1964 to Law No. 86 of 1969)—Application for exemption refused by the Minister, acting upon the conclusions of the statutory Advisory Committee—Conclusions of said Committee on the factual situation reached under a misconception—Because they were contradicted by facts based on information emanating from an official source—In the present case from the District Officer who acts according to normal practice in this kind of cases—Consequently, the Respondent Minister was led to refuse the said application for exemption on an erroneous basis—Reaching, thus, the sub judice decision contrary to law and in excess and abuse of powers—Sub judice decision annulled.

Act or decision contrary to law and in excess of power—Article 146.1 of the constitution—See supra.

Misconception—Administrative decision taken under a misconception of the factual situation of the case—Conclusions on the factual situation misconceived—Because they were contradicted by facts based on information emanating from official sources—In the circumstances, the sub judice decision has to be annulled as contrary to law and in excess of powers.

The Applicant, who was called for military service, applied on May 29, 1969, to the Minister of Interior for exemption on the ground that he had more than three dependants (i.e. his widowed mother and four younger brothers); and that he was,

therefore, entitled to the exemption from military service applied for under section 4(3)(f) of the relevant Law (*supra*). The Minister rejected this application obviously for the reasons recorded in the relevant minutes of the Advisory Committee, that is to say, because it did not accept the Applicant's statements about his working to support his family and because in any case the amount of his earnings, which the Committee took to be £15 monthly, did not justify treating him as having more than three dependants as required by section 4(3)(f) (*supra*).

1969
Dec: 29
—
ANDREAS
MELETIOU
v.
REPUBLIC
(MINISTER
OF INTERIOR)

Yet at the time of the relevant meetings of the Advisory Committee, the District Officer of Nicosia-Kyrenia, who had been asked, according to normal practice, to investigate the factual aspects of the Applicant's case, had reported that, after leaving school, the Applicant took up employment on a full time basis at £40.— per month and that he was contributing £30 per month towards the maintenance of his family. In the circumstances, the District Officer recommended the exemption of the Applicant.

Annulling the *sub judice* decision of the Respondent Minister, the Court:—

Held, (1). In the light of these facts (*supra*) based on information emanating from an official source, I am bound to find that the conclusions of the Advisory Committee were misconceived and as a result the Minister of Interior was led to decide the matter on an erroneous basis, reaching, thus, the *sub judice* decision contrary to law and in excess of powers.

(2) If the Advisory Committee had any doubts about the accuracy of the information supplied by the District Officer, it could have asked for further investigations to be made; but, otherwise, it could not reject, as it did, the only official information available at the time.

(3) In the circumstances I have no difficulty in declaring *null* and *void* the *sub judice* decision not to exempt the Applicant from military service. The matter has to be re-examined by the Minister of Interior in its proper context; and on the face of the District Officer's report I would venture to say that there does appear—unless the contrary is established—that this is a case coming within both the letter and spirit of section 4(3)(f) (*supra*) because the Applicant has more than three

1969
Dec. 29

—
ANDREAS
MELETIOU
v.
REPUBLIC
(MINISTER
OF INTERIOR)

dependants. And I award £30 towards costs in favour of the Applicant.

*Sub judice decision annulled.
Order for costs as above.*

Recourse.

Recourse against the decision of the Respondent not to exempt Applicant from service in the National Guard.

N. Aloneftis, for the Applicant.

S. Nicolaidis, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLIDIS, J.: In this case the Applicant complains against a decision of the Respondent Minister of Interior not to exempt him from service in the National Guard.

The Applicant was called up for military service on the 2nd January, 1969; the Applicant applied immediately for exemption from such service for, more or less, the same reason which is mentioned later on in this judgment, but his application was rejected (see *exhibits* 3, 4 and 5). As, however, the Applicant was, then, a pupil of a secondary school—wherefrom he graduated in June 1969—his enlistment was deferred till the completion of his studies.

A further application of the Applicant for exemption (*exhibit* 6), which has led to the *sub judice* decision, was made on the 29th May, 1969, and it was based on the contention that as the Applicant's father had died in 1968, and the Applicant became, thus, the head of his family, which comprised his widowed mother, who was doing no work other than housework, and four younger brothers, all attending school, he was, by law, entitled to be exempted from military service, as having more than three dependants.

The decision which is challenged by this recourse is dated the 16th August, 1969 (*exhibit* 10). It was reached by the Minister of Interior and it must be read together with the relevant minutes of the Advisory Committee, which functions under the relevant legislation (The National Guard Laws from

Law 20/64 to Law 86/69); the said minutes are dated the 21st July, 1969 and the 28th July, 1969 (see *exhibit 8*).

The non-exemption of the Applicant was communicated to him by letter dated the 23rd August, 1969 (*exhibit 1*); and this recourse was filed on the 2nd September, 1969.

It was alleged by the Applicant, all along, that even while he was a pupil he was working to support his family—(who have practically no other means of livelihood, except a very small income from immovable property)—and that he took up full-time employment after he had graduated from secondary school.

It appears from the afore-mentioned minutes of the Advisory Committee that it decided not to recommend the exemption of the Applicant because it did not accept as exact his statements about his working to support his family before and after he had left school, and because, in any case, the amount of his earnings, which the Committee took to be £15 monthly, did not justify treating him as having more than three dependants (so as to be entitled to exemption under section 4(3)(f) of the relevant legislation).

Yet, at the time of the relevant meetings of the Advisory Committee, the District Officer of Nicosia-Kyrenia, who had been asked, according to normal practice, to investigate the factual aspects of the case of the Applicant, had reported, on the 15th, July and 22nd, July, 1969, (see *exhibits 7 and 9* respectively) that the Applicant had been earning £15 per month *while at school*, that he took up employment on a full-time basis, at £40 per month, *after he had graduated*, and that he was contributing £30 *per month* towards the maintenance of his family, which consists—as stated—apart from himself, of his mother and four minor brothers. In the circumstances the District Officer recommended the exemption of the Applicant.

In the light of these facts, based on information emanating from an official source, I am bound to find that the conclusions of the Advisory Committee were misconceived and as a result the Minister of Interior was led to decide the matter of the application of the Applicant for exemption on an erroneous basis, reaching, thus, the *sub judice* decision contrary to law and in excess of powers.

1969
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If the Advisory Committee had any doubts about the accuracy of the information supplied by the District Officer it could have asked for further investigations to be made; but, otherwise, it could not reject, as it did, the only official information available at the time.

In the circumstances, I have no difficulty whatsoever in declaring *null* and *void* and of no effect whatsoever the *sub judice* decision not to exempt the Applicant from military service. The matter has to be re-examined by the Minister of Interior in its proper context; and on the face of the District Officer's reports I would venture to say that there does appear—unless the contrary is established—that this is a case coming within both the letter and spirit of the relevant legislative provision (section 4(3)(f)) because of the Applicant having more than three dependants.

Regarding costs I award in favour of the Applicant, and against the Respondent, £30 towards costs.

*Sub judice decision annulled.
Order for costs as above.*