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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PRINTING
COMPANY
'TELEGRAPH'

THE PRINTING COMPANY 'TELEGRAPH' LTD.,

Applicant,

LTD.

and

v.

REPUBLIC
(MINISTER OF
INTERIOR
AND ANOTHER)

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE PUBLIC INFORMATION OFFICE,

Respondents.

(Case No. 394/74).

Press Law, Cap. 79—Printing or publication of newspaper—Title of newspaper—Receipt issued under s. 4 of the Law—Respondents under a duty, before issuing it, to enquire as to whether proposed title is so resembling to any other title for which a receipt had already been issued and which was likely to cause confusion—Section 11 of the Law.

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Administrative Law—Omission—Issue by administration of receipt under s. 4 of the Press Law, Cap. 79 in a manner contrary to s. 11 of the Law—Not a case of omission but a case of wrong application of the Law.

10

Injunction—Recourse under Article 146 of the Constitution—Issue of an injunction—Not within the powers of the Court—Article 146.4 of the Constitution.

The applicant is the proprietor of a newspaper under the title "Dimokratia" for which a receipt under section 4* of the Press Law, Cap. 79, was issued by the respondents on the 17th July, 1970 upon compliance of the applicant with the requirements of s. 3(1)** of the said Law. This newspaper circulated for a period of about six months, after the issue of the said receipt, as an afternoon newspaper and since then it was published for the first time on 2.12.1974 as a weekly one.

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* Vide p. 31 *post*.

** Vide pp. 30-31 *post*.

On the same day *i.e.* on 2.12.1974 a weekly newspaper was published by the interested party with the title "Dimokratiki".

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Prior to the publication of this latter paper its proprietor (the interested party in this recourse) obtained the relative receipt on 28.11.1974 under s. 4 of the Law.

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The applicant in this recourse, besides claiming an order cancelling the decision of the respondents whereby they approved the registration and/or issue of "Dimokratiki" newspaper, they also claimed an order of the Court prohibiting the registration and/or issue and publication of the newspaper under the title "Dimokratiki".

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The sole question that fell for consideration in this recourse was whether the respondents upon compliance of the interested party with the requirements of section 3 of the Press Law, were bound to issue the relevant receipt or whether they had a discretion not to issue the receipt, after taking into account the provisions of section 11* of the Law.

Held, (1) Section 11 of the Press Law, which although enacted prior to the coming into force of our Constitution is in conformity with Article 19.3** thereof, clearly protects the right of the applicant as proprietor of the title of the newspaper "Dimokratia" which right he acquired by the issue of the relative receipt to him by the respondents.

(2) Respondents had a duty before issuing the receipt to the interested party to enquire as to whether the proposed title by them was so resembling to any other title for which a receipt had already been issued and which was likely to cause confusion (pp. 35-36 *post*).

(3) This is not a case of omission on the part of the administration but a case of wrong application of the law in issuing the receipt complained of.

(4) The second remedy claimed by the applicant for the issue of an injunction is not within the powers of this Court in determining a recourse as provided by Article 146.4 of the Constitution.

Sub judice decision annulled.

* Vide p. 32 *post*.

** Vide p. 35 *post*.

Cases referred to:

"*Kosmos Ltd.*" *Press v. The Republic* (1971) 3 C.L.R. 387.

Recourse.

Recourse against the decision of the respondents to approve the registration and/or issue of a newspaper with the title "Dimokratiki".

A. A. Skordis with M. Papapetrou, for the applicant.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

G. Pelagias, for the interested party.

Cur. adv. vult.

The following judgment* was delivered by:-

MALACHTOS, J.: The applicant in this recourse is the proprietor of a newspaper under the title "Dimokratia" for which a receipt under section 4 of the Press Law, Cap. 79, was issued by the respondents on the 17th July, 1970 upon compliance of the applicant with the requirements of section 3 (1) of the said Law. This newspaper circulated for a period of about six months, after the issue of the said receipt, as an afternoon newspaper and since then it was published for the first time on 2/12/74 as a weekly one.

On the same day *i.e.* on 2/12/74 a weekly newspaper was published by the interested party with the title "Dimokratiki".

Prior to the publication of "Dimokratiki" newspaper the interested party obtained the relative receipt on 28/11/74 under section 4 of the Law. Section 3 (1) and section 4 of the Press Law, Cap. 79, read as follows:

" 3. (1) Subject to the provisions of subsections (2) and (3) hereof, no person shall print or publish or cause to be printed or published any newspaper in the Colony, unless he first furnishes the Administrative Secretary with -

(a) a declaration on oath to be made and subscribed before a judge in the form contained in the First Schedule to this Law, setting forth the particulars therein set out, made and signed by the person named therein as proprietor of the newspaper to which it relates; and

* For final judgment on appeal see p. 394 in this Part *post*.

(b) a bond in the sum of five hundred pounds executed before and certified by a certifying officer appointed under the Certifying Officers Law or any Law amending or substituted for the same, signed by the person named in the statutory declaration as the proprietor and secured to the satisfaction of the Administrative Secretary either by a surety or sureties or by mortgage or deposit of money or other securities as the Administrative Secretary may, in any case, direct, conditioned that the proprietor shall pay to Her Majesty* every penalty which may be imposed upon, or adjudged against, him upon any conviction for printing or publishing or publishing or causing to be printed or published any seditious or other libel at any time after the execution of the bond and also any damages or compensation and costs on any judgment for the plaintiff in any action for libel against the proprietor and all other penalties whatsoever which may be imposed upon, or adjudged against, him under the provisions of this Law, and obtains a receipt as in section 4 of this Law provided.

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4. Upon receiving a declaration and a bond, as in section 3 of this Law provided, the Administrative Secretary shall file or cause the same to be filed in his office and shall, thereupon, give or cause to be given to the proprietor of the newspaper, in respect of which the declaration and bond were furnished, a receipt bearing the date on which such declaration and bond were furnished, and such receipt shall be admissible in all proceedings as evidence of all that is stated therein relating to such declaration and bond".

On the 13th December, 1974, the applicant filed the present recourse claiming the following remedies:

(a) Cancellation of the decision and/or administrative act of the Public Information Office and/or of the Minister of Interior dated 28/11/74, by which it has approved the registration and/or the issue of a newspaper with the title "Dimokratiki" and its circulation under the said title; and

* Now the Republic

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(b) an order of the Court prohibiting the registration and/or the issue and publication of the newspaper under the title "Dimokratiki".

The application is based on the provisions of section 11 of the Press Law, and as stated therein the act and/or decision of the respondents is contrary to the provisions of the said Law. Section 11 of the Press Law reads as follows:

" 11. Upon compliance with the requirements of sections 3 and 4 of this Law, the title of the newspaper, in respect of which the statutory declaration and bond have been furnished and filed, shall be deemed to be the property of the proprietor and no person other than the proprietor shall be entitled to use such title or any title so resembling it as to be likely to cause confusion".

On the other hand, the respondents in their opposition, which was also adopted by the interested party, allege:-

- (a) That they did not issue any administrative act by which the title, issue and publication of "Dimokratiki" newspaper was approved; and
- (b) that the respondents have no power to prohibit the issue or publication of a newspaper under any title.

On the 21/1/75 when the case came on for hearing, counsel for respondents argued that there is no power to examine whether there is confusion between the title of a newspaper in respect of which a receipt was already issued under section 4 of the law, and a newspaper for which a receipt is sought under the same section. In fact, according always to his submission, there is no power to prohibit at all any newspaper for any reason by an administrative act and an administrative Court cannot prohibit the circulation of any newspaper under any title for whatever reason. If there is any power to do so it is not within the domain of public law but of private law. This principle is in accordance with the constitutional principles of freedom of the press under Article 19 of the Constitution to the effect that no prior licence is required for the publication of any newspaper. It is prohibited to condition the publication of a newspaper by the issue of a permit regarding its title even if that title may infringe the rights of others. There is nothing in the Press Law which says that the administration may refuse

the issue of a receipt or may prohibit the publication of a newspaper if its title falls within the ambit of section 11.

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5 Finally, he submitted that the administration did not issue any administrative act approving or allowing the publication of the newspaper "Dimokratiki" and, therefore, the recourse should be dismissed as it has no subject matter.

10 On the other hand, counsel for the applicant submitted that section 11 of the Press Law creates an obligation on the administrative authority to examine whether there is a previous title already registered to which the proposed title is resembling and is likely to cause confusion. Section 11 of Cap. 79, by itself creates a property in the title of the newspaper and the administrative authority by accepting the documents and issuing the receipt creates a right of ownership in the title.
15 He submitted that the issue of the receipt is an administrative decision taken by the respondents.

20 In their address to the Court both counsel relied on the case of "*Kosmos Ltd.*" *Press v. The Republic of Cyprus*, (1971) 3 C.L.R. 387. In that case the applicants delivered on the 23rd January, 1971, to the appropriate officer of the Public Information Office all documents required by and in due compliance with section 3 of the Press Law for the issue to them of a receipt under section 4 for the printing and publishing of a newspaper with the title "Eleftheros". The said receipt was not issued upon the filing of all documents but instead the applicants were told that this would be done within a few days. Apparently the officer at the Public Information Office who accepted the said documents forwarded them to the Minister of Interior, who is the competent authority after the establishment
25 of the Republic in lieu of the Administrative Secretary referred to in section 4. At the Ministry where all relevant files are kept, a search was made and it was found out that the interested party in March 1968 filed for the purpose of the issue to him of a receipt for the publication of a newspaper also with the title "Eleftheros". These documents did not fully comply with the requirements of section 3 of the law and he was asked to
30 comply with the said formalities before the relevant receipt applied for could be issued. There was no reply and no compliance ever since.

40 In spite of this, however, the Minister of the Interior personally thought fit before proceeding to issue the receipt to the appli-

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cants to remind the interested party of his said application and informed him that unless he complied within eight days with the required formalities of the law his application would be dismissed and a permit for the publication of a newspaper with the title "Eleftheros" would be issued to the applicants. Upon that the interested party complied fully with the requirements of section 3 by filing a new declaration and a bond dated 28/1/71, which was received at the Public Information Office on the 1st February, 1971, and the Minister of Interior issued the relevant receipt. On the same day the applicants were informed by the Director of the Public Information Office that with reference to their application no receipt could be issued as it had been ascertained that prior to their said application a receipt was issued to the interested party for the issue and publication of a newspaper under the title "Eleftheros".

The point for determination in that case, as the trial Court put it, was whether the Minister of Interior had any discretion under section 4 of the Law to issue the receipt provided thereby or whether he was bound to issue it forthwith upon compliance by an applicant with the requirements of section 3.

The learned trial Judge found that the interested party had no vested right in the name of "Eleftheros" by merely filing an incomplete application and therefore the Minister of Interior acted in violation of the law in not issuing the receipt to the applicants and so the *sub judice* decision was annulled.

However, he proceeded further and said that "I will not go that far as to say that the Minister of Interior is not possessed of any discretionary power whatsoever under section 4 of the Law. In my opinion, he is possessed with a limited one and that is to check if the title sought to be registered is so resembling an already registered one as to be likely to cause confusion. This limited discretion can be inferred from the provisions of section 11 of the Law, which recognises that upon compliance with the requirements of sections 3 and 4 of the Law, the title of the newspaper in respect of which the statutory declaration and bond have been furnished and filed, shall be deemed to be the property of the proprietor and no person other than the proprietor shall be entitled to use such title or any title so resembling it, as to be likely to cause confusion".

The only question that falls for consideration in this recourse is whether the respondents upon compliance of the interested

party with the requirements of section 3 of the Press Law, were bound to issue the relevant receipt or whether they had a discretion, after taking into account the provisions of section 11 of the law.

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5 A permit to issue and publish a newspaper in Cyprus was required up to 23/12/1947 under the Newspaper, Books and Printing Press Laws, 1934 to 1944. These laws were repealed by section 29 of the Press Law 28/1947 now Cap. 79, which came into force on 24/12/47. There is no provision in the
10 Press Law, Cap. 79, to the effect that a permit for the issue and publication of a newspaper is required. In fact, had there been any such provision it would have been unconstitutional as offending the rights of a citizen safeguarded in paragraphs 1 and 2 of Article 19 of our Constitution. However,
15 the exercise of these rights safeguarded by paragraphs 1 and 2 of this Article is not absolute and this clearly appears from paragraph 3 thereof. Article 19, paragraphs 1, 2 and 3 read as follows:

20 “ 1. Every person has the right to freedom of speech and expression in any form.

2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.

25 3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public
30 morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary”.

35 So, section 11 of the Press Law, which although enacted prior to the coming into force of our Constitution is in conformity with Article 19 paragraph 3 thereof, clearly protects the right of the applicant as proprietor of the title of the newspaper “Dimokratia” which right he acquired by the issue of the relative receipt to him by the respondents on 17th July,
40 1970. Consequently, the respondents had a duty before issuing the receipt to the interested party to enquire as to whether the

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proposed title by them was so resembling to any other title for which a receipt had already been issued and which was likely to cause confusion. Instead they acted under the erroneous impression that they had no say in the matter and that after compliance by the interested party with the provisions of section 3 of the law they were bound to issue the relative receipt. Furthermore, it is clear that they would even issue a receipt to the interested party not only for a title resembling the title of the newspaper of the applicant but even for the very same one.

It has been submitted by counsel for the respondents that if the Court finds that the respondents had a discretionary power as far as the title of a newspaper is concerned, then it is a case of omission and the Court may declare that omission and the administration should examine the question of title afresh in the light of section 11 of the Law.

In my view this is not a case of omission on the part of the administration but a case of wrong application of the law in issuing the receipt complained of. Needless to say that the second remedy claimed by the applicant for the issue of an injunction is not within the powers of this Court in determining a recourse as provided by Article 146.4 of the Constitution.

For the reasons stated above the decision of the respondents to issue the said receipt to the interested party is declared *null* and *void*.

Respondents to pay £20.— against the costs of the applicant.

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