

1982 May 4

[HADJIANASTASSIOU, LORIS AND PIKIS, JJ.]

MODESTOS PITSILLOS,

Appellant-Applicant,

v.

CHRISTAKIS KATOMONIATIS AND OTHERS,

Respondents.

(Civil Appeal No. 6047).

5 *Elections—Election petition—Conveyance of voters—Not prohibited by the Law—Treating of voters—When is treating corrupt on the part of the person treating—Undue influence—Canvassing and propagating for the candidate of one's choice—Not illegal provided that it does not interfere with the free exercise of the right of the elector.*

10 This was an appeal against a dismissal of an election petition. The grounds on which the petition was based were undue influence, treating, corrupt practices and conveyance of electors. Regarding undue influence petitioner alleged that persons outside the polling station, who were supporters of the respondent, indicated or induced voters to vote for the respondents. Re-
15 regarding treating it was alleged by petitioner that refreshments were offered by respondents to voters; and regarding conveyance of voters a supporter of a party admitted that he carried some supporters of his party to the polling station.

20 On the question of undue influence the trial Court held that it is the ordinary right of a citizen to canvass and propagate for the candidate of his choice and that this is not illegal provided the person propagating or canvassing does not interfere with the free exercise of the right of the elector. On the question of treatment the trial Court found that in the circumstances under which the refreshments were consumed and offered they were not offered for the purpose of influencing or corruptly
25 influencing the electors.

Upon appeal by the petitioner:

Held, that there is no provision in the Laws governing elections

about conveyance of voters; and, therefore, unless conveyance of a voter to and from the poles may be dealt under other misconduct in the course of the election, it is neither an offence nor illegal nor is it a ground for complaint nor is this a ground for avoiding an election; that treating is corrupt on the part of the person treating when at the time he treats he does so for the purpose of influencing any other person in the exercise of his power of voting and that it is not corrupt when it is a mere form of ordinary hospitality; that there is no room for interfering with the judgment of the trial Court and the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

- Bolton Case* [1874] 2 O' M. & H. 138 at p. 144;
Wallingford Case [1869] 1 O' M. & H. 57;
Bewdley Case [1869] 1 O' M. & H. 16 at p. 19;
Bradford Case (No. 2) [1869] 1 O' M. & H. 35;
Constantinides and Others v. Bishop of Kition and Others, 7 C.L.R. 57 at p. 59;
Louth, Northern Division Case [1911] 6 O' M. & H. 103.

Appeal.

Appeal by applicant against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaidis, D.J.) dated the 13th December, 1979 (Election Petition No. 22/79) whereby his petition against the election of the respondents as non-displaced members of the Improvement Board of Ayios Dhometios was dismissed.

A. Eftychiou, for the appellant.

A. Ladas, for the respondents.

HADJIANASTASSIOU J. gave the following judgment of the Court. On 22nd July, 1979, a Sunday, was the polling day for the election of three non-displaced members of the Improvement Board of Ayios Dhometios. It was a hotly contested election. There were seven candidates: The coalition of DECO-AKEL having as candidates Katomoniatis Christakis, Hadjiloizou Neophytos and Soteriou Kyriacos who on the ballot paper appear under the heading "No. 1—SYNDYASMOS KATOMONIATI Christakis", the candidates of EDEK party,

namely Sarris Nicos, Ioannou Michael and Mannouris Erodotos under the heading "No. 2—SYNDYASMOS SARRI Nicou" and the 7th candidate was PITSILLOS Modestos, under the heading "ANEXARTITOS—No. 3". (See exhibit No. 2):

5. According to the returning officer 1,347 electors voted; thirty-three ballot papers were invalid and the candidates received the following votes:

	Katomoniatis Christakis	1,019
	Hadjiloizou Neophytos	1,009
10'	Soteriou Kyriacos	984
	Sarris Nicos	236
	Ioannou Michael	218
	Mannouris Erodotos	230
	Pitsillos Modostos	80

- 15 The first three candidates were declared as the successful candidates

The petitioner, Modestos Pitsillos, is the leader of the Justice Party. The respondents are the three candidates who were declared as elected. The petition was served under the Law on the District Officer.

By this petition the petitioner seeks a declaration that the return of the respondents as elected members of the Improvement Board of Ayios Dhometios, is null and void; and that the poll for the election in which the respondents were elected is void, and any other remedy the Court may deem fit.

Indeed the grounds on which the petition is based are: general undue influence, treating, corrupt practices, illegal activities and violation of the law and that due to the aforesaid the majority of the electors were prevented and/or it was likely to be prevented from voting the candidate or candidates of their choice.

The particulars which are set out in the petition are: That the respondents and/or their agents and/or other persons acting on their behalf personally or jointly prevented and/or excluded electors who were in favour of the petitioner from voting; and that they took out of the ballot box ballot papers casting in favour of the petitioner.

The respondents and the District Officer opposed the petition.

Seven witnesses, including the petitioner, testified for him and three witnesses, i.e. respondent No. 2, Papademetriou the presiding officer of the 10th polling station, and A. Economides, a District Inspector, were common witnesses for the respondents and the District Officer. 5

The complaint of the petitioner about the exclusion of the electors from voting refers only to his son-in-law. The correct name of the son-in-law of the petition as on his identity card is Andreas Matheopoulos whereas in the list of electors it appeared as Andreas Marthacopoulos. He was allotted to the 10th polling station. Furthermore, it is the contention of the petitioner that his son-in-law was not allowed to vote. The evidence on this point comes from the petitioner and Papademetriou, the presiding officer of the 10th polling station. The elector—the son-in-law of the petitioner—himself was not called to testify. The version of the presiding officer is that this elector produced his identity card and as there was a discrepancy in the name, he advised the elector to remain outside the polling station as the mukhtar of the quarter was about to come to that polling station and if the mukhtar ascertained his identity, then the elector would be allowed to vote. That person went out of the polling station but he did not return. Sometime later the petitioner went in and complained that his son-in-law was not allowed to vote. The presiding officer explained to him what had happened and advised the petitioner to go and bring his son-in-law as the mukhtar was there and if he verified his identity, he would be allowed to vote. The petitioner in cross-examination did not contest this version but he stated that after he had the conversation with the presiding officer, he went out but his son-in-law had already left. The trial Court dealing with this point had this to say at p. 47: 10
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“It was the duty of the presiding officer to ascertain the identity of this person before allowing him to vote. We are of the view that he acted very properly in the circumstances and his action is not and cannot be considered as exclusion of the elector or prevention of the electorate from exercising his right to vote. Had this elector, who was outside the polling station and complained to his father-in-law, the petitioner, waited for a short time until the return of the petitioner from the polling station, 35
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he would have exercised his right as the mukhtar had arrived and would have certified his identity. Therefore, this ground fails”.

5 There was a further complaint by the petitioner that ballot papers were taken out of the ballot boxes. The trial Court made it clear that there was no shred of evidence before the Court substantiating or even creating suspicion that such an act was done. The petitioner only stated that he would agree with the counting if his votes were 98 and not 80. But the petitioner
10 went on to say that only 678 persons voted in the 10 polling stations of Ayios Dhometios and he based his such allegation on an alleged publication of one daily paper, whereas there is the positive evidence of Economides who had available the relevant sheets and he stated clearly how the counting took place and that 1,347 electors voted. This ground, also fails.
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As regards Charalambos Ioannou Kouspis (P.W. 6), supporter of the EDEK party, he admitted that he carried some supporters of his party, some without reward, but the petitioner had no objection and no complaint for this transportation, probably
20 because they voted the losing candidates.

The Law governing elections and election petitions are Law 7/79, the Elections (House of Representatives and Communa Chambers) Law, 1959, No. 47/59, Law 4/63 and 71/63. The grounds for avoidance of an election on an election petition
25 are set out in s. 62 of Law 47/59. Part V of Law 47/59 under the heading “Corrupt and illegal practices and other provisions relating to an election” is substantially a replica of certain provisions of the English Representation of the People’s Act 1949. Our Cyprus statute is, in our view, an exhaustive legisla-
30 tion. There is no provision about the conveyance of voters. In the English Act, section 88, there is extensive provision about restrictions and prohibitions for conveyance of voters to and from the poll. The Cypriot legislator made no provision at all and, therefore, unless conveyance of a voter to and from
35 the polls may be dealt under other misconduct in the course of the election, it is neither an offence nor illegal nor is it a ground for complaint nor is this a ground for avoiding an election.

The payment of the travelling expenses of a voter is no

bribery; see *Bolton Case, Ormerod v. Cross* (1874) 2 O'M & H. 138, at p. 144.

Indeed even in England where conveyance of voters to and from the poll is prohibited, a candidate is, however, not to be liable, nor is his election to be avoided, for such an illegal practice committed without his consent or connivance by an agent other than by his election agent—(Representation of the People's Act, 1949, s. 88(1) proviso (b)). There is no doubt that, even if the English Law was applicable in this country, which it is not, and even if there was evidence that voters were carried to the poll by an agent of the respondents other than the nominated election agent, the respondents are not liable and the election is not avoided.

Regarding the question of treating, the petitioner contended that refreshments were offered even to electors. He further stated that they were offering refreshments whilst they were looking to check the list of electors outside the polling station. He also stated that they were offering refreshments until they checked the voters' lists to find the name of the person who approached them. A refreshment was offered to Pitsillos, the petitioner, and he accepted it. The petitioner agreed that he had that refreshment but he alleged that he did so in order to create evidence for his probably anticipated petition. Some refreshments were offered also to those at EDEK table, but neither Hadjiloizou nor any of the successful candidates—respondents nor anyone on their behalf or on behalf of anyone of his coalition paid for those refreshments and that the refreshments were not offered with the intention to influence any voter. There is no doubt that the offering of refreshments to or for any person for the purpose of corruptly influencing that person is deabt with under the Law.

“Corruptly” imports intention. (*Wallingford Case* (1869) 1 O'M & H 57). “Corruptly” does not mean wickedly, or immorally, or dishonestly or anything of that sort. See *Bewdley Case*, (1869) 1 O'M & H 16 at p. 19, but doing something knowing that it is wrong. See, also, *Bradford Case (No. 2)* (1869) 1 O'M & H 35) and doing it with the object and intention of doing that thing which the statute intended to forbid.

Treating is corrupt on the part of the person treating when

at the time he treats he does so for the purpose of influencing any other person in the exercise of his power of voting. Treating is not corrupt when it is a mere form of ordinary hospitality. See *Pascal Constantinides, George Chacalli, and Achilles Liasides v. Kyrillos Papadopoulos Metropolitan Bishop of Kition, Theophani Theodotou and Antoni Theodotou*, 7 C.L.R. 57 at p. 59.

Finally the trial Court had this to say at p. 52:

10 “On the totality of the evidence before us we accept that refreshments were taken by the supporters of the respondents at the place where the table outside the polling station was; that those refreshments were consumed by them; they were offered to the supporters of EDEK who were at the other table; a refreshment was offered to the petitioner and probably some refreshments were offered by those at the table to a few friends of them. It was July. 15 The temperature was high. In the circumstances under which these refreshments were brought there, they were consumed and offered, we do not accept that they were offered for the purpose of influencing or corruptly influencing the electors. Certainly neither the persons who manned EDEK 20 desk for the petitioner nor those who were engaged at the table of the respondents might be influenced by the drink of a refreshment. We do not accept that a Cypriot voter might be influenced by the receiving of five mils, as the petitioner suggested. But even the petitioner stated that the offer of a refreshment to a person with intent to influence him might be adverse to the offeror and the candidates he would support. By this we are not taken 30 to subscribe to the view that a general offer of refreshment under different circumstances might not be considered by a Court as treating”.

Then the Court turning to the question of undue influence had this to say at p. 53:

35 “*Undue influence*—The evidence which was adduced to substantiate the allegation that undue influence was exercised is to the effect that person outside the polling station, in the street or in the yard of the school, who were supporters of the respondents indicated to or induced voters 40 to vote for the respondents. Furthermore some of the

voters were either accompanied to the table of the supporters of the respondents outside the polling station where assistance was given to them about their names in the lists, etc., as these persons had at their disposal copies of extracts of the register of electors who at the same time advised some of those voters to vote for the respondents. 5

Undue influence is defined by section 42 of Law 47/59. Where by reason of a general undue influence the majority of electors were or might have been prevented from electing the candidate or candidates whom they preferred is a ground for declaring void an election. (Section 62). 'Undue influence' in s. 62 has the meaning given to this term in s. 42. 10

It is the ordinary right of a citizen to canvass and to propagate for the candidate of his choice. This is not illegal provided the person propagating or canvassing does not interfere with the free exercise of the right of the elector". 15

In the case of *Louth, Northern Division Case* (1911) 6 O'M. H. 103, "where a number of voters who could read and write had been induced to vote as illiterate and so to disclose unnecessarily for whom they voted, it was held that although the facts were suspicious and might be relevant on the question of intimidation, illegal intent had not been established and there is no proof of contrivance". 20 25

Finally the trial Court concluded as follows:

"Papademetriou, the presiding officer, testified about the holding of the election. Having regard to his evidence, which we accept in toto, no illegality or violation of the Law took place and everything was done as provided by Law. 30

Economides's evidence relates to the counting of the votes. We accept his evidence in toto; it was not seriously contested.

In view of what we have endeavoured to explain, this election petition fails. The election was properly held in accordance with the Law and the respondents, namely, Katomoniatis Christakis, Hadjiloizou Neophytos and 35

Soteriou Kyriacos, whose return and election were complained of, were duly returned and elected.

In the result the election petition is dismissed".

5 On appeal counsel for the appellant argued (1) that the trial Court wrongly dismissed the application of the appellant and wrongly decided that there was no sufficient evidence to support his allegation. (2)(a) The trial Court wrongly dismissed the application of the appellant and wrongly decided that the transfer of the voters by the Chairman of the Community in order to
10 vote does not provide a reason for the cancellation of the election. (2)(b) That the trial Court wrongly approached the law, and particularly the provisions of Law 47/59.

We have considered very carefully the argument of counsel on appeal, but in our view there is no room for interfering with
15 the judgment of our learned colleague and we would dismiss the appeal with costs.

Appeal dismissed with costs.