

1984 November 30

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS KALISPERAS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE,

Respondent.

(Case No. 112/72).

Administrative Law—Discretionary powers—Judicial control—Principles applicable.

Constitutional Law—Discrimination—Burden of proof of, on applicant.

Persons who Sustained Losses (Aid Fund) Law 2/68—Regulations made thereunder—Not ultra vires the Law. 5

Law 2/68 provided for various types of relief to persons who have agriculture as their main occupation and their property became inaccessible as a result of the Turkish disturbances in 1963. The respondent turned down applicant's application for relief on the ground that he did not have agriculture as his main occupation; and hence this recourse. 10

Held, after dealing with the meaning of "occupation",

(1) that it is not for this Court to substitute its discretion to that of the administration and the Court will not interfere with that discretion unless it is wrong in principle; that the respondent was not wrong in deciding that applicant did not have agriculture as his main occupation and it was reasonably open to him to reach the relevant decision on the basis of the facts which were placed before him. 15

(2) That the burden of proof of discrimination was on the applicant and he has failed to convince the Court that he was the victim of discrimination.

5 (3) That the regulations, which were made under Law 2/68 were not ultra vires the law.

Application dismissed.

Cases referred to:

Luckin v. Hamlyn [1869] 21 L.T. 366.

Recourse.

10 Recourse against the refusal of the respondent to grant applicant relief under regulation 4(b) of the Regulations made under Law No. 2/68 for damage suffered by him as a result of the Turkish disturbances in 1963.

I. Mavronicolas, for the applicant.

15 *A. Evangelou*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. The matter which arises for consideration in the present case is whether the applicant is entitled to receive relief under reg. 4(b) of the regulations made under Law 2/68. The law provides for a relief fund to persons who suffered damage as a result of the Turkish disturbances of 1963.

25 There is no doubt that Law 2/68 provides for various types of relief, one which is that provided in reg. 4(b) which provides for assistance to persons who have agriculture as their main occupation and their property became inaccessible as a result of the Turkish disturbances in 1963. So, to qualify for assistance, a person under the law, must have agriculture as his main occupation and he must have suffered loss and his lands must have remained inaccessible.

30 Indeed, once the relevant law does not interpret the phrase "main occupation" one can turn legitimately to dictionaries. Going through Stroud's Judicial dictionary, 2nd edn. Vol. 2,

the word "occupation" means "the trade or calling by which he ordinarily seeks his livelihood". In the case of *Luckin v. Hamlyn*, [1869] 21 L.T. p. 366, "the business in which he is usually engaged to the knowledge of his neighbours, (per Martin B.) and in respect of which he contracts debts, (National Merchantile Bank Re. Haynes, 49 L.J. Bank 62) and the statement of which would be sufficient to identify him to persons who have dealings with him". (per Coleridge Chief Justice in the case of *Throssel v. Marsh*.

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The Court has to consider whether the respondent committee rightly applied the law in reaching the sub judice decision. Having perused the relevant file and in particular red 20, the respondent committee took into account inter alia how the applicant is known to the society, how he calls himself socially and in his dealings with other persons.

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Going through the file and the correspondence, the applicant himself does not ever mention farming as his occupation (see reds 37, 41 and 42).

Time and again it was stated by this Court that it is not for the Court to substitute its discretion to that of the administration and the Court will not interfere with that discretion unless it is wrong in principle.

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Having given my best consideration to this matter, I have reached the conclusion that the committee was not wrong in deciding that applicant did not have farming as his main occupation. Indeed, it was reasonably open to the Committee to reach the relevant decision on the basis of the facts which were placed before it.

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Turning now to applicant's contention that he was discriminated against viz. other applicants, there is no ground and indeed no evidence before me justifying this contention. I repeat that the burden of proof was on the applicant and in these circumstances he has failed to convince me that he was the victim of discrimination. Not only the applicant did not adduce any evidence to substantiate his allegations, but the files of the various persons put before me by counsel for the respondent do not show a discrimination.

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As to the other contention of the applicant that the committee did not exercise its discretion, but acted on the directions of the Legal Department, I find no merit.

5 From the material before me, it appears that what actually happened is that the Committee, as it appears, sought the advice of the Attorney-General regarding the criteria to be taken into consideration in arriving at its decision.

10 Furthermore, as regards the allegation that the relevant regulations were ultra vires the law, I am of the view that the contention of counsel cannot stand.

For all the above reasons, the recourse is dismissed. No order as to costs.

*Recourse dismissed. No order
as to costs.*