

1986 December 8

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

SOCRATIS P. PRODROMITIS AND OTHERS,

Applicants,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondents.

(Cases Nos. 7/85, 10/85, and 11/85).

Administrative Law—Powers conferred by law—Cannot be validly exercised, unless conditions imposed by law were strictly adhered to.

Public Corporations—Electricity Authority of Cyprus—The Public Corporations (Regulation of Personnel Matters) Law 61/70—Section 3—Promotions—Relevant powers cannot be validly exercised in the absence of Regulations made thereunder—Any such regulations, which were neither approved by the Council of Ministers nor published in the Official Gazette, are invalid. 5 10

The applicants seek the annulment of the promotion of two other employees of the respondent Authority. The question of law that arises is the validity of the said promotions in view of the fact that they were not made under any rules or regulations made by the Authority pursuant to the Law. Counsel for the respondent submitted that the promotions in question were not made under any rules or regulations, but solely on the power conferred on the Authority by the relevant law. 15

Held, annulling the sub judice decision: (1) When a law confers power on any person or body and imposes 20

conditions for its exercise, such power cannot be validly exercised, unless there is strict adherence to the statutory prerequisites. The respondent's power of appointment, promotion etc. of personnel derives from s. 3 of the
5 Public Corporations (Regulation of Personnel Matters) Law 61/70, but, in the absence of Regulations enacted thereunder, it cannot be exercised.

(2) If regulations were made, but were not approved by the Council of Ministers and published in the Gazette,
10 such regulations are invalid and, consequently, any promotions made thereunder are null and void. If, on the other hand, no such regulations were ever made, the power of promotion could not be validly exercised.

15 *Sub judice decision annulled.*
No order as to costs.

Cases referred to:

Kofteros v. Electricity Authority of Cyprus (1985) 3 C.L.R. 394;

Arsalides and Another v. C.Y.T.A. (1983) 3 C.L.R. 510.

20 **Recourses.**

Recourses against the decision of the respondents to promote the interested parties to the post of Assistant Transmission/Distribution Manager (Executive) in preference and instead of the applicants.

25 *Ph. Valiantis for L. Papaphilippou*, for the applicants.

S. Pouyouros for G. Cacoyiannis, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants in these recourses are employees of the respondent
30 Electricity Authority. Each one of them in a separate recourse seeks the annulment of the promotion of two other employees of the Authority. At a late stage in the proceedings as a common point of law is raised in all of them, on the application of counsel and with the approval of the
35 Court, they were taken together.

The question of law that arises is the validity of the said promotions in view of the fact that they were not made under any rules or regulations made by the Authority pursuant to the Law.

In the address of counsel for the applicants it was contended that the sub judice promotions were made by the Authority under invalid regulations in the sense that they were not approved by the Council of Ministers and published in the Official Gazette and, in the alternative, as there are no rules or regulations, the Authority could not exercise the power of promotion. 5 10

Learned counsel for the respondents, on the other side, submitted that the sub judice promotions were not made on the basis of any rules or regulations but solely on the power conferred on the Authority by the relevant law. 15

In *Kofteros v. Electricity Authority of Cyprus*, (1985) 3 C.L.R. 394, I reviewed the power of the Authority with regard to personnel matters. In short, the Authority that was established under the Electricity Development Law, Cap. 171, was vested with power to appoint General Manager, and such other officers, agents and servants, as the Authority might from time to time determine. It was, however, stripped off of such power by Articles 122 and 124 of the Constitution as the employees of the Authority were encompassed within the definition of "civil service" for the purposes of that part of the Constitution. 20 25

After the Public Service Commission established by the Constitution ceased to function, and a new Public Service Commission with power limited to the civil servants proper was set up by the Civil Service Law, 1967 (No. 33 of 1967), a vacuum was created. The Public Corporations (Regulation of Personnel Matters) Law, 1970 (No. 61 of 1970) was enacted whereby by s. 3 power was conferred on the Authority to appoint, confirm appointment, emplace personnel, promote, transfer, etc. Such power, however, has to be exercised subject to the provisions of this Law. 30 35

When a Law confers power on any person or body and makes provision how, in what circumstances or places any

conditions for the exercise of such power, it cannot be validly exercised unless there is strict adherence to the statutory prerequisites.

5 On either view of the contentions of counsel, the Authority acted contrary to Law. If rules or regulations were made which were not approved by the Council of Ministers and published in the Official Gazette of the Republic, such regulations were invalid and consequently any decision taken thereunder is null and void—(See
10 *Arsalides and Another v. Cyprus Telecommunications Authority*, (1983) 3 C.L.R. 510; *Kofteros* (supra)).

If, on the other hand, no rules or regulations were at all made, again the sub judice decision cannot survive the scrutiny of the revisional Court. On examination of
15 the provisions of s. 3 of Law 61/70, the Authority cannot exercise competence on appointment, promotion, etc., of personnel in the absence of rules or regulations specifically made thereunder as no regulations relating to personnel matters of the Authority were in operation
20 prior to the enactment of this Law.

These recourses succeed on the aforesaid ground. Therefore. I need not embark on the other grounds on which the recourses are based.

25 In the result the sub judice decisions are annulled but in the circumstances no order as to costs is made.

*Sub judice decisions
annulled. No order
as to costs.*