

1986 March 19

[TRIANTAFYLLIDES, P., MALACHTOS, SAVVIDES, LORIS,
KOURRIS, JJ.]

COSTAS KALISPERAS,

Appellant - Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Revisional Jurisdiction Appeal No. 432).

Administrative Law—Revisional jurisdiction—Discretion of Administration—This Court does not substitute its own discretion with that of the organ vested with the discretion.

5 *Administrative Law—Due inquiry—Question as to the meaning of a word in the regulation applicable—Opinion of Attorney-General as to such meaning—Duty to ask for such opinion.*

10 *The Persons Who Sustained Losses (Aid Funds) Laws, 1968-1970 (Law 2/68 as amended by Laws 35/68 and 2/70)—The Regulations made thereunder (247/68, 268/68 and 246/72), reg. 4 (b).*

15 On 4.2.70 the appellant submitted an application for financial assistance under the provisions of the Persons Who Sustained Losses (Aid Fund) Laws, 1968 - 1970 (Law 2/68 as amended by Laws 35/68 and 2/70) and the regulations made thereunder on the ground that he was a person who had agriculture as his main occupation and who was entitled to such relief.

Appellant stated in his application that he was the

owner of 850 donums of agricultural land and gardens of which 300 donums of agriculture land and 52 donums of gardens were situated in areas which had become inaccessible. He further mentioned that prior to 21.12.63 his income from agriculture was £1,700 per year and after such date it was reduced to £1,000. He also stated that he had the additional occupation of a land valuer out of which he was earning £2,000 per year. 5

Regulation 4 (b) of the Regulations made under s. 6 of the said laws provided for financial assistance to persons affected who had agriculture as their main occupation. 10

As a problem arose during the examination of the application as to the meaning of the words "main occupation" the Committee set up under the said laws found it necessary to ask for the opinion of the Attorney - General. The Committee finally decided to reject the application on the ground that the appellant was not a person who had agriculture as his "main occupation". 15

As a result the appellant filed a recourse to this Court, which was dismissed by a Judge of this Court. Hence the present appeal, which was argued on the following two points, namely that the trial Court erred in finding that the respondent interpreted reg. 4(b) correctly and that the respondent carried out a due inquiry in the matter. 20

Held, dismissing the appeal: (1) In the circumstances it was reasonably open to the respondent to reach the sub judice decision. This Court does not interfere with the exercise of a discretion and thus substitute its discretion to that of the organ vested with such discretion, unless it is satisfied that the discretion was wrongly exercised in principle. 25 30

(2) The respondent Committee carried out a full inquiry into the matter. Since in the process of the inquiry a legal question arose as to the meaning of the words "main occupation" the Committee had a duty to ask for the expert opinion of the Attorney - General. The inquiry in this case was not carried out by the Attorney-General but by the Committee and its decision was taken 35

in the light of all the material before it, including the opinion of the Attorney-General.

Appeal dismissed.

No order as to costs.

5 Cases referred to:

Metaphoriki Eteria v. The Republic (1981) 3 C.L.R. 221;

Eliades v. The Republic (1985) 3 C.L.R. 1904.

Appeal.

10 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 30th November, 1984 (Revisional Jurisdiction Case No. 112/72) whereby appellant's recourse against the refusal of the respondents to grant him relief under regulation 4(b) of the regulations made under Law No. 2/68 for damage suffered by
15 him as a result of the Turkish disturbances in 1963 was dismissed.

A. Markides, for the applicant.

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

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Cur. adv. vult.

TRIANAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

25 SAVVIDES J.: This Revisional Appeal is directed against the dismissal by a Judge of this Court sitting in the first instance of appellant's recourse No. 112/72 challenging the validity of the decision of the respondent whereby the respondent rejected appellant's application for the grant to him of financial assistance under the provisions of the Persons Who Sustained Losses (Aid Fund) Laws 1968-
30 1970 (Law 2/68 as amended by Laws 35/68 and 2/70) and the regulations made thereunder.

Law 2/68 was enacted for the purpose of providing for a relief fund for the assistance of persons who suffered

material loss as a result of the intercommunal troubles of 1963 and the consequences thereof. By the said law and its subsequent amendments provision is made for the grant of relief to citizens of the Republic (Greeks, Armenians, Maronites or Latins) whose properties had been destroyed, or had been substantially damaged, or who lost their occupation or had suffered material diminution of their income for reasons directly attributable to the situation created after the events of the 21st December, 1963.

Under the provisions of regulation 4 of the regulations made under s.6 of Law 2/68 (published in Supplement No. 3 of the official Gazette of the Republic under Notification 247/68 and as subsequently amended by regulations under Notifications 268/68 and 246/72), various types of relief are provided one of which, under regulation 4 (b), is for financial assistance to persons affected who had agriculture as their main occupation, in respect of agricultural land which became inaccessible as a result of the intercommunal troubles of 1963.

The powers of the Council of Ministers under the provisions of s. 6 of Law 2/68 were widened by s. 5 of the amending Law 35/68.

The appellant on the 4th February, 1970, submitted an application under the law and in accordance with the regulations, praying for financial assistance on the ground that he was a person who had agriculture as his main occupation and who was entitled to such relief. Appellant stated in his application, inter alia, that he was the owner of 850 donums of agricultural land and gardens of which 300 donums of agricultural land and 52 donums of gardens were situated in areas which had become inaccessible. He further mentioned that prior to the 21st December, 1963, his annual income from agriculture was £1,700 and after such date it was reduced to £1,000 as he had no access to part of his property. Also, that he had the additional occupation of a land valuer which he had been exercising since 1942 and out of which he was earning £2,000 per year.

The committee which had been set up under the law to deal with such applications met on the 3rd August, 1970, to examine appellant's application. After having heard the appellant and bearing in mind the opinion expressed by the office of the Attorney-General to the Ministry of Finance on the 12th July, 1963, as to the interpretation of the meaning of the expression "farmer qualifying for relief" under the relevant law, rejected appellant's application on the ground that his main occupation was not agriculture. As a result appellant filed recourse No. 375/70 in the Supreme Court challenging such decision which recourse was, however, at a later stage withdrawn on the undertaking of the respondent to re-examine his application.

Appellant's application was re-examined by the committee at a meeting which took place on the 4th March, 1971, at which the appellant was invited to attend for the purpose of explaining any facts in support of his application. The appellant repeated what he said at the meeting of the 3rd August, 1970, and stated that he considered himself as being a person who had farming as his main occupation. At the request of the committee appellant submitted accounts in respect of agricultural expenses incurred by him for the years 1961-1970.

The question arose whether under the provisions of the law and the regulations the appellant could be treated as a person whose main occupation was agriculture. A problem arose as to the meaning of the words "main occupation" and the committee found it necessary to ask the opinion of the Attorney-General on the matter. Such opinion was given on the 27th January, 1972. The committee bearing in mind all material facts of the case before it and the opinion of the Attorney-General decided that the appellant was not a person who had agriculture as his main occupation and as a result dismissed his application. The appellant filed a recourse against such dismissal.

The learned trial Judge in dismissing appellant's recourse found that the committee was not wrong in deciding that the appellant did not have agriculture as his main

occupation and that it was reasonably open to the committee to reach the relevant decision on the basis of the facts which were placed before it. He also dismissed the contention of the appellant that he was discriminated against vis a vis other applicants who were granted such relief on the ground that there was no evidence showing such discrimination. He further rejected a contention that the relevant regulations were ultra vires the enabling law.

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As a result appellant filed the present appeal and counsel on his behalf by his notice of appeal raised a number of grounds in support of it. In the course of the hearing, however, counsel abandoned most of the grounds and restricted his appeal to the following two grounds:

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The trial Court erred in finding that:

1. The respondent interpreted regulation 4(b), correctly and,
2. The respondent carried out a due inquiry in the matter.

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In arguing his first ground of appeal counsel for appellant submitted that correct interpretation of the words "main occupation" mentioned in the regulation should not be interpreted in such a narrow way as the committee has done. A person as in the case of the appellant, counsel submitted, may have two or three main occupations one of which agriculture and the respondent could not choose one of such occupations as being the main occupation and exclude the others.

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In support of his second ground of appeal he contended that from what appears in the record, the committee found itself in a dilemma and unable to take a decision in the matter and had to resort to the Attorney-General for his opinion. It was the duty of the committee, counsel submitted, to decide the case on the material before it and not ask for the Attorney-General of the Republic to decide the case on its behalf.

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Having heard counsel for appellant we found it unnecessary to call upon counsel for the respondent to ad-

vance any arguments in reply to those of counsel for appellant.

We have carefully considered the reasons which counsel for appellant advanced before us but in the circumstances of the case and in the light of all the material before us we have reached the conclusion that in accordance with the provisions of the law and the regulations made thereunder, it was reasonably open to the respondent to reach the sub judice decision complained of and we see no reason to interfere with it. It is well settled that this Court does not interfere with the exercise of discretion by a competent organ and thus substitute its own discretion to that of the organ vested with such discretion unless it is satisfied that the discretion was wrongly exercised in principle. (See, *Metaphoriki Eteria Ayios Antonios v. The Republic* (1981) 3 C.L.R. 221, 239; *Eliades v. The Republic* (1985) 3 C.L.R. 1904). In the present case we are not so satisfied, and, therefore, we cannot interfere.

As to the complaint that there was no due inquiry into the case again we find ourselves unable to agree with counsel for appellant. From the material before us it is abundantly clear that the Committee set up under the law carried out a full inquiry into the matter and not only it did not restrict itself to the material contained in the application of the appellant and the documents supplied by him in support thereof but it gave the opportunity to the appellant to argue his case before it both on the first occasion as well as on the re-examination of the case. As to the contention that the opinion of the Attorney-General was wrongly obtained we are of the view that if in the process of the inquiry by the Committee a legal question arose as to the meaning of a word the Committee had a duty to ask for the expert opinion of the Attorney-General whose office was responsible to give such opinion. The inquiry in the case was not carried out by the Attorney-General but by the Committee and its decision was taken in the light of all the material before it including the opinion of the office of the Attorney-General on a legal issue.

For all the above reasons this appeal fails and is hereby dismissed but in the circumstances we make no order for costs.

Appeal dismissed.
No order as to costs. 5