

1986 May 17

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

MARO EFTHYMIADOU ADZINI,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 315/77).

5 *Public Service Commission—Chairman of the Commission related to one of the candidates for appointment (the interested party)—Chairman participated at the relevant meeting, but did not vote—If he had not participated, there would have been no quorum—In the circumstances there was nothing wrong in his participation—The Public Service Law 33/67, ss. 4(4) and 11(2).*

10 *Public Officers—Appointments—Applicant in order to succeed should prove that he is manifestly superior to the interested party.*

15 The applicant impugns by means of the present recourse the appointment of the interested party to the post of Town Planning Officer, Class II, in the Department of Town Planning and Housing, which is a first entry post.  
20 The applicant was appointed on contract in the said Department on 26.1.76 whereas the interested party was so appointed on 28.2.77. The qualifications of the applicant and the interested party were more or less the same. As regards the ability of those candidates already in the service the interested party was, according to the opinion of the Director of the Department, the best candidate.

The interested party made also the best performance at the interview.

The husband of the interested party was the grandson of one of the sisters of the Chairman of the respondent Commission. The Chairman disclosed his said relationship, 5  
but in view of the fact that, if the Chairman was to withdraw from the relevant meeting, there would be no quorum as prescribed by s. 11 of the Law 33/67, as one of the members of the Commission had died sometime before the relevant meeting, it was agreed that the Chairman 10  
should participate so as to enable the formation of a quorum. As a matter of fact the Chairman did participate in the meeting, but did not vote.

Counsel for the applicant submitted that: (a) The sub 15  
judice decision is wrong in law as the Chairman could not participate in the meeting in view of the provisions of s. 4(4)\* of Law 33/67, which enables the President of the Republic to appoint a temporary member of the Commission, if "any member is on leave or is unable owing to 20  
absence from Cyprus or to illness or to any other cause to discharge his functions..."; and (b) Although the interested party had only 6½ months' experience in architecture was preferred to the applicant who had 17 years experience.

*Held*, dismissing the recourse: (1) As it is clear from 25  
the wording of s. 4(4) of Law 33/67 an acting appointment is not imperative when a member of the Commission is unable to perform his duties or discharge his functions. Indeed the section speaks that such appointment "may be made" and not that it shall be made. As long as the 30  
requirements of s. 11(2) of Law 33/67 about a quorum are complied with the Commission functions properly and no need for an acting appointment is required.

(2) In the present case as the Commission could not be 35  
properly constituted, the Chairman participated for the purpose of forming a quorum only and he did not vote. There was nothing wrong in his participation.

(3) It is a fundamental principle of administrative law

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\* Quoted at pp. 994-995 post.

that in cases of appointment or promotion an applicant in order to succeed should satisfy the Court that he is manifestly superior to the interested party. In this case the applicant failed to satisfy the Court that he was manifestly superior or even better than the interested party.

*Recourse dismissed.*

*No Order as to costs.*

**Recourse.**

Recourse against the decision of the respondent to appoint the interested party to the post of Town Planning Officer, Class II, in the Department of Town Planning and Housing in preference to and instead of the applicant.

*E. Efsthathiou*, for the applicant.

*R. Gavrielides*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

MALACTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the decision of the respondents, which was published in the official Gazette of the Republic dated 29th October, 1977, to appoint the interested party, namely, Miretta (Maria) Ioannidou-Hardjiotou, to the post of Town Planning Officer, Class II, in the department of Town Planning and Housing, is null and void and of no legal effect whatsoever.

The relevant facts of the case are the following:

The Director-General of the Ministry of Interior by his letter dated 18th April, 1977, informed the Chairman of the Public Service Commission that the Minister of Finance had approved the filling of one vacancy in the post of Town Planning Officer, Class II, in the department of Town Planning and Housing and requested him to take the necessary steps for its filling. According to the relevant scheme of service the post of Town Planning Officer, Class II, is a first entry post.

The Public Service Commission at its meeting of the

29th April, 1977, decided that the vacancy in question be advertised, and the relevant publication was published in the official Gazette of the Republic on 13th May, 1977, and in response thereof nine applications were submitted.

At its meeting of the 7th July 1977, the Commission decided that all candidates be invited for interview on the 14th September, 1977, and that the Director of the Department of Town Planning and Housing should be requested to be present. At its meeting of the 14th September, 1977, and in the presence of the Director of the Department the Commission interviewed eight candidates including the applicant and the interested party and decided to appoint the interested party with effect as from 1st November, 1977. The relevant minutes of the Commission read as follows:

“The Chairman stated that he was related to one of the candidates—namely Mrs. Miretta (Maria) Ioannidou—Hartsiotou. In view of the fact that, if the Chairman was to withdraw from the meeting there would be no quorum as prescribed by Section 11 of Law No. 33/67, it was agreed that the Chairman should not withdraw from the meeting and that he should participate so as to enable the formation of the required quorum.

The Commission then interviewed the following candidates:

1. Koutsoupides Panayiotis M.
2. Andreadou Maria (Taliotou)
3. Christodoulou Panayiotis
4. Christodoulou Frosoula
5. Soteriou Androula
6. Efthymiadou-Adzini Maria
7. Ioannidou-Hartsiotou Miretta (Maria)
8. Pattichis Andreas

5 The Commission as well as the Director of the Department of Town Planning and Housing put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service. The Commission considered the merits, qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.).

10 The Commission observed that, during the interview, Mrs. Miretta (Maria) Ioannidou-Hartsiotou gave very satisfactory replies to questions put to her and generally she proved to be the best candidate for appointment to the above post.

15 The Director of the Department of Town Planning and Housing stated that Mrs. Miretta (Maria) Ioannidou-Hartsiotou had been serving in his Department on contract since 28.2.77, her services had been very satisfactory and that he considered her very suitable for the post of Town Planning Officer, Class II.

20 According to the relevant scheme of service, candidates for appointment to the post of Town Planning Officer, Class II, must possess 'a good knowledge of English'. The Commission observed that Mrs. Miretta (Maria) Ioannidou-Hartsiodou had graduated from the Pancyprian Gymnasium for Girls at Phaneromeni and later on from the Architectural Schools of the University of Florence in Italy; in both these schools the English language is taught as one of the subjects. In view of the above, the Commission was satisfied that Mrs. Ioannidou-Hartsiodou did possess 'a good knowledge of English'.

25 30 35 After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the inter-

view, the Commission came to the conclusion that Mrs. Miretta (Maria) Ioannidou-Hartsiodou was on the whole the best. The Commission accordingly decided that Mrs. Miretta (Maria) Ioannidou-Hartsiotou be appointed to the temporary (Dev.) post of Town Planning Officer, Class II, w.e.f. 1.10.77." 5

In fact, due to the provisions of s. 11(2) of the Public Service Law, the Commission could not be properly constituted without the participation of its Chairman as Dr. Economopoulos who was one of its members died some time prior to the 29th October, 1977. So, the Chairman participated but he did not vote. 10

S. 11(2) reads as follows:

"The Chairman and two other members present at any meeting, or if the Chairman is not present then four members present, shall form a quorum. No decision shall be valid unless taken by three votes." 15

It should also be stated here that the relationship of the Chairman of the Public Service Commission to the interested party was that the husband of the interested party was the grandson of one of the sisters of the Chairman. 20

The grounds of law as argued by counsel for applicant may be summarized as follows:

(a) That the decision complained of is contrary to law and 25

(b) That the respondent Commission did not select the applicant as the best candidate for the post in question.

As regards ground (a) counsel for applicant submitted that in the instant case the Chairman of the Public Service Commission could not participate at the relevant meeting in view of the provisions of s. 4(4) of the Public Service Law of 1967 (Law 33/67). This sub-section reads as follows: 30

"If during any period any member of the Commission is on leave, or is unable owing to absence from Cyprus or to illness or to any other cause, to 35

perform his duties or to discharge his functions as a member of the Commission under this Law, the President of the Republic may appoint any person qualified to be a member of the Commission, to be a temporary member for the period during which the member is on leave or is so disabled.”

Reference was made to Recourse for Annulment by Tsatsos, 3rd ed., p. 216 where it is stated, as a general rule, that a member of a collective organ is not allowed to take part at a meeting when he has an interest in the result of the case under consideration either by relationship or by an already declared opinion, or generally being unable to exercise his duties objectively and above suspicion. The qualification of a member to participate at a meeting is also lifted when the rules regulating his substitution due to his absence or his inability to attend for any reason are not followed.

As there is special provision in section 4(4) of the Law counsel for applicant submitted that an acting appointment was the only way to meet the situation and so participation at the meeting of the Chairman of the Commission even without voting was contrary to Law.

The short answer to the above submission of counsel for applicant is that it is clear from the wording of s. 4(4) of the Law that an acting appointment is not imperative when a member of the Commission is unable to perform his duties or discharge his functions as this section speaks that an acting appointment may be made and not shall be made. As long as the requirements of s. 11(2) of the Law about a quorum are complied with the Commission functions properly and no need for acting appointment is required. In the present case as the Commission could not be properly constituted the Chairman participated for the purpose of forming a quorum only and he did not vote. I find nothing wrong in his participation. This view finds support in Tsatsos Recourse for Annulment, 3rd ed., p. 217; where it is stated that the exclusion from participation according to the general principles—i. e. without specific provision of the Law—is not excused in cases where the rest of the

collective organ are only so many so that not to be possible to form a quorum, unless otherwise the law provides.

As regards ground (b) of the grounds of law, that the respondent Commission failed to select the applicant as the best candidate the only submission of substance of counsel for applicant was that although the interested party had only 6½ months experience in architecture was preferred for appointment to the post in question whereas the applicant with 17 years experience was rejected. 5

It is a fundamental principle of administrative law that in cases of appointment or promotion an applicant in order to succeed must prove to the satisfaction of the Court that he is manifestly superior to the interested party. In the present case counsel for applicant failed to satisfy me that the applicant was manifestly superior or even better than the interested party. 10 15

It is clear from the documentary evidence before me that the qualifications of the applicant and the interested party were more or less the same.

Applicant who was appointed on contract in the department of Town Planning and Housing on 26.1.1976 has the following qualifications: 20

- (i) Pancyprian Gymnasium 1949-1955,
- (ii) English lower 1954, and
- (iii) Metsovion National Polytechnic of Athens 1955-1960. 25

Interested party who was also appointed on contract in the department of Town Planning and Housing on 28.2.1977 has the following qualifications:

- (i) Pancyprian Gymnasium 1965-1971, 30
- (ii) Certificate in French language, and
- (iii) Architectural school of Florence university, Italy 1972-1977.

As regards the ability of those already in the service in

carrying out their duties according to the opinion of the Director of the department the interested party was the best candidate. The interested party made also the best performance at the interview.

- 5 It was, therefore, open to the respondent Commission who, as it appears from the relevant minutes took all relevant factors into account, including the factor of experience, to select the interested party as the best candidate.

- 10 For the above reasons this recourse fails and is dismissed with no order as to costs.

*Recourse dismissed.  
No order as to costs.*