

TYSER, C.J.  
&  
BERTRAM,  
J.  
1909  
April 27

[TYSER, C.J. AND BERTRAM, J.]

GAVRIEL GEORGIADES  
(AS PRESIDENT OF THE MUNICIPAL COUNCIL OF LEFKARA),

v.

CHARITOU KOUSSOURO.

MUNICIPALITY—FARMING OUT OF PUBLIC REVENUE—"DELEGATUS NON POTEST DELEGARE"—MUNICIPAL COUNCILS LAW, 1882, SEC. 49—WEIGHING AND MEASURING LAW, 1898.

A Municipal Council farmed out to a contractor in return for a fixed sum for a period of three years the whole of its municipal revenues.

HELD: That the contract was *ultra vires*.

- (a) On the ground that it was not competent to the Municipality to delegate to another person the duties entrusted to it by the legislature.
- (b) On the ground that it was inconsistent with the express provisions of the Municipal Councils Law and the Weighing and Measuring Law, 1898.

This was an appeal from a judgment of the District Court of Larnaca.

The Plaintiff sued as President of the Municipality of Lefkara to restrain the Defendant from interfering with the business and the general revenues of the Municipality, and for the delivery of certain scales, seals and other property of the Municipality, said to be illegally detained by the Defendant.

The Defendant justified the acts complained of on the ground of an agreement dated January 1st, 1908, made with a Municipal Council, which to the extent of one-half of its members was comprised of predecessors in office of the present members of the Municipality. The present members of the Municipality contended and the Court found that this agreement was *ultra vires*.

It appeared from the admitted facts that on January 1st, 1908, three months before the annual election at which under the law half the members retired, the Municipality entered into the agreement in question by which they purported to farm out to the Defendant for a period of three years for a fixed sum payable monthly the following sources of municipal revenue, *i.e.*, the dues receivable from

- (a) The Municipal slaughter house.
- (b) The Municipal petroleum store.
- (c) Weights and measures.
- (d) The public market.

*Haji Ioannou* for the Appellant.

*Nicolaidis* for the Respondent.

The Court dismissed the appeal.

*Judgment:* It was contended by Mr. *Haji Ioannou* for the Defendant, that inasmuch as in authorising the Municipality to carry out these various public services the legislature had not prescribed

the particular method in which this was to be done, it was open to the Municipality to carry them out in any manner they thought best for the public interests, whether through their own officials, or by contract, or by way of lease.

There is however a distinction to be drawn between the case in which a Municipality executes public services by its own officials, or by contracting with another person to perform them on its behalf, and the case in which it farms out its whole duty to another person. In the first case the Municipality receives the revenue derived from the services, and pays the expenses of executing them, in the latter case it hands over both the duty of executing the service and the revenue derived from it to the lessee.

Even if there were no words in the laws governing the performance of these municipal services which prohibited such a method of securing their performance, it would be sufficient to say that the law having charged the Municipality with the duty of performing these services it is not competent to them to depute this duty to another. The maxim *delegatus non potest delegare* applies in principle to such a proceeding, and in Turkish law that maxim is expressly embodied in Art. 1466 of the Mejlle.

The Statutes referred to, however, contain enactments which prohibit the expedient here adopted.

Sec. 49 of the Municipal Councils Law, 1882, requires that all revenues derived from Municipal property and all income receivable by the Council shall be paid to the Municipal Treasurer and by him carried to an account called the Municipal Fund and that out of this fund shall be paid amongst other things the "expenses necessarily incurred by the Council in the exercise and discharge of all powers, duties and liabilities imposed on them by law."

This section no doubt refers to the case of the first appointment of a Treasurer under the law, but it is not intended to be confined to that case. It is a general section governing the financial procedure of the Council, and under this section the present contract is clearly *ultra vires*.

Further, by the Weights and Measures Law, 1898 (which governs the performance of one of the public services so leased), it is provided by Sec. 11 that "all fees paid to Municipal weighers under this law shall be paid into the Municipal Chest." It is clearly illegitimate therefore for the Municipality to assign these fees to the appellant.

The appeal must therefore be dismissed with costs.

*Appeal dismissed.*

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