

[ZERIA, P., VASSILIADES, TRIANTAFYLIDIS, MUNIR
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MAROULLA THEODORIDOU AND OTHERS,
Applicants,

and

THE REPUBLIC OF CYPRUS THROUGH
(a) THE MINISTER OF FINANCE,
(b) THE ACCOUNTANT-GENERAL,

Respondents.

(Case No. 39/63).

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AND OTHERS
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Administrative Law—Widows' and Orphans' Pension Fund (Special Provisions) Law of 1962 (Law 44/62)—Validity of action taken by the Accountant-General of the Republic under section 5(d) thereof—Such action in no way interferes with rights of Contributors to the Fund—Alleged failure of the Republic to apply the balance of the fund provided for under section 5(d) to the benefit of its Contributors, a complaint against an alleged legislative omission, and therefore, not entertainable under Article 146 of the Constitution.

This is a recourse by widows of public servants, who were contributors to the Widows' and Orphans' Pension Fund, against action taken by the Accountant-General, under section 5(d) of the Widows' and Orphans' Pension Fund (Special Provisions) Law, 1962 (No. 44/62), and also against the failure of the Republic to apply the balance, provided for under section 5(d), to the benefit of Applicants and other persons entitled under the Fund.

It has been alleged by counsel for Applicants that provision in section 5(d) of Law No. 44/62 contravenes Article 23 of the Constitution, in that it amounts to unlawfully depriving the Fund of the balance held by the Accountant-General.

Held, I. On whether applicants were entitled to file present recourse under Article 146.2 of the Constitution :-

(a) The Court has grave doubts, to say the least, whether, in the light of Article 146(2), the Applicants were en-

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titled to file this recourse but, in order to proceed and deal with the substance of the Case, it has decided to leave this point unresolved.

II. On the substance :

(a) It is common ground that the action of the Accountant-General complained of, i.e. holding, pending further legislative provision, any remaining balance of the Fund, after the payments back to contributors and payment of pensions, was taken in accordance with a provision of Law, viz. section 5(d) of Law No. 44/62. His action, therefore, can only be declared to be invalid if it were to be shown that the relevant provision is itself invalid.

(b) Without deciding as to what extent, if any, Article 23 affords protection to a fund, like the Widows' and Orphans' Pension Fund, the Court is of the opinion that the action provided for under section 5(d) cannot amount to deprivation of the balance involved, because it is clearly provided that such balance is to be held, by the Accountant-General, for the time being and pending the making of further legislative provision. Moreover, such action, under section 5(d), in no way interferes with the rights of Applicants and other contributors. For this reason, it is not possible to hold that any right, that might have been safeguarded under Article 23, has been contravened. Section 5(d) is, therefore, not invalid and the action taken under it is also valid in the circumstances.

(c) Applicants' claim concerning the failure of the Republic to apply the balance in question, as it is claimed that it ought to have been applied, this clearly amounts to a complaint against an alleged legislative omission, and it is not, therefore, a matter entertainable under the competence created by Article 146.

(d) This recourse, thus, fails on both points. First, because it has not been established that the legislative provision, under which the Accountant-General has acted, is invalid, and, secondly, because the omission alleged cannot be the subject-matter of proceedings under Article 146, such as the present recourse.

Order : This recourse is dismissed, but the Court is not making any order as to costs.

Recourse dismissed.

Observation : The Court fully appreciates the financial difficulties which have led the Applicants to file this recourse. But it is not, unfortunately, for this Court to say what the appropriate authorities should or should not do to alleviate such difficulties. We can only say that we sympathize with Applicants in their plight and trust that the appropriate authorities, when they come to deal with this matter, will treat their cases sympathetically too.

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Recourse.

Recourse for a declaration, inter alia, that the indefinite retention by the Accountant-General of the balance of the fund as provided in paragraph (d) of section 5 of the Widows' and Orphans' Pension Fund (Special Provisions) Law, Law 44/62, without definite provision as to the destiny of the said balance is null and void and made in excess and/or abuse of power.

A Pantelides for the applicants.

K.C. Talarides, Counsel of the Republic, for the respondents.

ZEKIA, P.: The judgment will be delivered by Mr. Justice Triantafyllides.

TRIANAFYLLIDES, J.: In this recourse, eleven widows of public servants who were contributors to the Widows' and Orphans' Pension Fund, are complaining both against action taken by the Accountant-General, under section 5(d) of the Widows' and Orphans' Pension Fund (Special Provisions) Law, Law 44/62, and also against the failure of the Republic to apply the balance, provided for under section 5(d), to the benefit of Applicants and other persons entitled under the Fund.

The Court has grave doubts, to say the least, whether, in the light of Article 146(2), the Applicants were entitled to file this recourse but, in order to proceed and deal with the substance of the Case, it has decided to leave this point unresolved.

It is common ground that the action of the Accountant-General complained of, i.e. holding, pending further legis-

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lative provision, any remaining balance of the Fund, after the payments back to contributors and payment of pensions, was taken in accordance with a provision of Law, viz. section 5(d) of Law 44/62. His action, therefore, can only be declared to be invalid if it were to be shown that the relevant provision is itself invalid.

It has been alleged by counsel for Applicants that the said provision contravenes Article 23 of the Constitution, in that it amounts to unlawfully depriving the Fund—which, as he has argued, is a public law person—of the balance held by the Accountant-General.

Without deciding as to what extent, if any, Article 23 affords protection to a fund, like the Widows' and Orphans' Pension Fund, the Court is of the opinion that the action provided for under section 5(d) cannot amount to deprivation of the balance involved, because it is clearly provided that such balance is to be held, by the Accountant-General, for the time being and pending the making of further legislative provision. Moreover, such action, under section 5(d), in no way interferes with the rights of Applicants and other contributors. For this reason, it is not possible to hold that any right, that might have been safeguarded under Article 23, has been contravened. Section 5(d) is, therefore, not invalid and the action taken under it is also valid in the circumstances.

Concerning the second part of Applicants' claim, about the failure of the Republic to apply the balance in question, as it is claimed that it ought to have been applied, this clearly amounts to a complaint against an alleged legislative omission, and it is not, therefore, a matter entertainable under the competence created by Article 146.

This recourse, thus, fails on both points. First, because it has not been established that the legislative provision, under which the Accountant-General has acted, is invalid, and, secondly, because the omission alleged cannot be the subject-matter of proceedings under Article 146, such as the present recourse.

The Court fully appreciates the financial difficulties which have led the Applicants to file this recourse. But it is not, unfortunately, for this Court to say what the appropriate authorities should or should not do to alleviate such difficulties. We can only say that we sympathize with Applicants,

in their plight and trust that the appropriate authorities when they come to deal with this matter, will treat their cases sympathetically too.

In the circumstances, this recourse is dismissed, but the Court is not making any order as to costs.

*Recourse dismissed. No order
as to costs.*

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