[TRIANTAFYLLIDES, J.]

1965
Jan. 29,
Feb. 1,
June 14, 19,
Dec. 29
1966
Jan. 11, 20,
April 23
—
JOSEPH C. GEORGHIADES
and
THE REPUBLIC OF CYPRUS
THROUGH THE
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

JOSEPH C. GEORGHIADES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 41/64)

Public Service—Public Officers—Public Service Commission—Disciplinary proceedings—Decision of the respondent Commission to dismiss applicant from the public service—Decision null and void on the ground that it was taken while the Commission was not properly constituted from the point of view of quorum — See, also, under Administrative Law, Constitutional Law, herebelow.

Administrative Law—Collective organ—Quorum—Principles applicable—Public Service Commission—Five members thereof do not constitute a proper quorum—Decision reached by the Commission at a meeting where only five members were present is null and void on that ground—General principles of Administrative Law and the Public Service Commission (Temporary Provisions) Law, 1965 (Law No. 72 of 1965), preamble—Decision of the Commission in the present case not validated by section 5 of the said Law—Because that section is not applicable to decisions taken by the Public Service Commission on which an Administrative Court had already reserved judgment, as in this case, prior to the enactment of the said Law.

Constitutional Law—Administrative Law—Doctrine of necessity—Respondent's decision to dismiss the applicant from the public service taken at a time when the said Commission was improperly constituted (supra)—Circumstances of the present case fall far short of the requirements which would enable legislative or administrative action to be validly taken by virtue of the "law of necessity", in accordance with the criteria laid down in Ibrahim's case case (infra).

In this case the applicant seeks a declaration that the de-

cision of the respondent Commission to dismiss him from the public service, as communicated to him by letter dated the 15th May, 1964, is null and void. This recourse was filed on the 2nd of June, 1964. It is not in dispute that the respondent Commission, when it decided to dismiss the applicant, had met with only five of its members being present. The hearing of this case was concluded on the 19th June, 1965, when judgment was reserved. Before it could be delivered the Public Service Commission (Temporary Provisions) Law, 1965 (Law No. 72 of 1965) was enacted in December, 1965. Section 5 of the said Law validates retrospectively decisions taken by the Public Service Commission, as constituted at the time when the applicant was dismissed. The hearing of this case was reopened on the 29th December, 1965, and on the 11th January, 1966, and counsel were heard regarding, *inter alia,* the applicability of the aforesaid section 5 to the *sub judice* decision.

Held, (1) it is not in dispute that the respondent Commission, when it decided to dismiss the applicant, had met with only five of its members being present; as held already by this Court in the cases of *Maratheftis and The Republic* (1965) 3 C.L.R. p. 576 at p. 581 and *Georghiades and The Republic* (reported in this part at p. 252 *(ante))*, such five members could not constitute a proper quorum; it follows that the Commission was, at the time, improperly constituted.

(2) That, with only five members present, the Commission could not function lawfully, appears also to be recognized by the preamble to the aforesaid Law No. 72 of 1965 *(supra)*.

(3) As already held by this Court in its judgment in the case No. 115/65 *Georghiades and the Republic (supra)* section 5 of the said Law No. 72 of 1965 *(supra)* is not, and could not validly be, applicable to a decision of the Commission on which this Court had already reserved judgment prior to the enactment of that Law. Therefore, the decision to dismiss the applicant cannot be regarded as validated by section 5 of the said Law *(supra)*.

(4) It has been argued, however, that the decision complained of has to be held to be a valid one, notwithstanding the defective constitution of the Commission,

on the ground that the Commission was unable at the time to act with its proper constitution, due to the then prevailing anomalous situation in the Island. But, bearing in mind the principles governing the "law of necessity" exhaustively discussed in the case of the *Attorney-General and Ibrahim*, 1964 C.L.R. 195 and the relevant criteria laid down therein, I have reached the conclusion that this case falls far short of coming within the ambit of the requirements which would enable legislative or administrative action to be validly taken by virtue of the said "law of necessity".

(5) For all the above reasons, I hold that the decision to dismiss the applicant has to be declared null and void on the ground that it was taken while the Commission was not properly constituted, from the point of view of quorum.

Decision complained of declared null and void. Each party to bear its own costs.

Cases referred to:

Maratheftis and The Republic, (1965) 3 C.L.R. 576 at p. 581;

Georghiades and The Republic (reported in this part at p. 252);

The Attorney-General v. Ibrahim, 1964 C.L.R. 195;

Kallouris and The Republic, 1964 C.L.R. 313.

Recourse.

Recourse against the decision of the Respondent to dismiss Applicant from the Public Service as from the 23rd May, 1964.

L. Clerides, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this Case the Applicant seeks a declaration that the decision of the Respondent Commission to dismiss him from the public service, as communicated to

him by letter dated the 15th May, 1964, *(exhibit 5)* is *null* and *void* and of no effect whatsoever.

The salient facts of this Case, as I find them on the material before me, are as follows:

Towards the end of October, 1963, Applicant, who was at the time an Assistant Examiner of Accounts, on probation, in the Audit Department, received instructions to proceed, at the beginning of November, 1963, with an audit team, to Karpass, for audit work there.

On the 1st November, 1963, the said instructions were repeated to Applicant and he asked to be excluded from the audit team in question, as he did not want to go.

On the 2nd Nobember, 1963, Applicant was informed in writing *(exhibit 1)*, by his immediate superior, that his request had been turned down and he was asked to state whether he would present himself ready for the trip to Karpass on Monday the 4th November, 1963, or whether he still refused to go.

Applicant replied there and then, in writing, *(exhibit 2)* that he was still unable to proceed to the Karpass area due to reasons beyond his control and, therefore, there was "no matter of refusal to go" on his part.

He was, on the same day, requested, again, orally this time, by the Deputy Auditor-General, Mr. Stathis, to comply with the instructions given to him, as above, but he refused to do so on personal reasons which, however, he did not divulge.

Applicant's superiors reported, then, the matter to the Respondent Commission.

On the 17th December, 1963, the Commission wrote to Applicant *(exhibit 3)* that it was considering against Applicant charges of improper conduct, insubordination and neglect of duty, arising out of his refusal to proceed to the Karpass area, as aforesaid; Applicant was asked to submit any explanations which he might have not later than the 4th January, 1964.

Applicant received this letter *(exhibit 3)* after the said date —on or about the 8th January, 1964—as he was away from Nicosia on audit business, and upon receipt thereof he went

and consulted Mr. Stathis, who, in his turn went and saw personally, on this matter, the Chairman of the Public Service Commission.

As Mr. Stathis has told the Court in his evidence—"Mr. Georghiades told me that a member of the Commission had asked him to tell me to write and withdraw the complaint; I said I was not in a position to do so and I went and saw the Chairman personally. I asked him whether he still wanted Applicant to write and explain in answer to *exhibit 3*. We had a talk and in the end the Chairman did not exactly tell me either yes or no on this point. Then I saw the Applicant and told him that I understood that under the circumstances they would not be expecting any explanation from him then". I accept this evidence of Mr. Stathis.

As a result of what Mr. Stathis told him, Applicant did not reply at all to *exhibit 3*.

Then, on the 23rd April, 1964, the Commission wrote to Applicant *(exhibit 4)* informing him that the Commission had taken notice of the fact that he had failed to reply to *exhibit 3* and that it was decided that he was to be summoned to appear before the Commission; in relation to the charges against him, on the 12th May, 1964.

The Applicant did appear before the Commission on the said date and the relevant minutes are *exhibit 6*. It appears therefrom that the Commission heard Mr. Stathis—and also Mr. Th. Christou who was the immediate superior of the Applicant at the material time—as well as the Applicant, and took the view that the Applicant should be dismissed from the service.

Thus *exhibit 5* came to be written to Applicant on the 15th May, 1964, as aforesaid, informing him that he was being dismissed from the service as from the 23rd May, 1964.

This recourse was filed on the 2nd June, 1964.

It has been Applicant's case in these proceedings that his failure to obey the relevant instructions was due to "security reasons", as he described them, arising out of Applicant's membership of what appears to have been an organization set up for security purposes. Actually, when Applicant appeared before the Commission, he did mention that he had failed to obey the said instructions due to "reasons connected

with the security" but he did not, at the time, give the Commission any further details of the matter. According to the Applicant's evidence, he was ready to place the relevant details before the Commission, on condition that no minutes would be kept, but, in the end, he failed to do so because the Chairman of the Commission refused—(and quite rightly so, in my opinion, as it was a case of proceedings before a public organ)—to adopt such a course.

During the proceedings before this Court, the hearing was suspended on the 10th April, 1965, in order to enable the Commission to look into the matter of the alleged "security reasons" and decide whether there existed any grounds for reconsideration of its decision to dismiss the Applicant. Eventually, the Respondent informed the Court on the 15th May, 1965, that it was not prepared to reconsider its previous decision.

The hearing was, then, resumed and the Applicant adduced evidence disclosing, for the first time to the Court, his said "security reasons"; Applicant did not give evidence himself. No evidence to the contrary was called upon by Respondent though the relevant evidence adduced by Applicant was cross-examined at some length.

Judgment was reserved on the 19th June, 1965; before it could be delivered the Public Service Commission (Temporary Provisions) Law, 1965 (Law 72/65) was enacted in December, 1965.

As the Applicant had put in issue, during the hearing of this Case, the validity of the constitution of the Commission at the material time, and as the said Law makes provision, by its section 5, aimed at validating retrospectively decisions taken by the Commission, as constituted at the time when the Applicant was dismissed, the hearing of this Case was reopened on the 29th December, 1965, and on the 11th and 20th January, 1966, and counsel were heard regarding, *inter alia*, the applicability of such section 5 to the *sub judice* decision.

It is not in dispute that the Commission, when it decided to dismiss Applicant, had met with only five of its members being present; as held already by this Court in the case of *Maratheftis and The Republic* (1965) 3 C.L.R. 576 at p. 581 such five members could not constitute a proper

quorum; it follows that, as a result, the Commission was, at the time, improperly constituted. (The same view of the position has already been taken by this Court in Case 115/65, *Georghiades and The Republic.**

That, with only five members present, the Commission could not function lawfully, appears also to be recognized by the preamble to the aforesaid Law 72/65.

Having found that the Commission was improperly constituted from the point of view of quorum, I leave open the question whether or not it was improperly constituted from any other point of view.

As already held by this Court in its Judgment in Case 115/65, *Georghiades and The Republic**, section 5 of Law 72/65 is not, and could not validly be, applicable to a decision of the Commission on which this Court had already reserved Judgment prior to the enactment of Law 72/65.

Therefore, the decision to dismiss Applicant cannot be regarded as validated by such section 5.

It has been argued, however, during the proceedings, that such decision has to be held to be a valid one, notwithstanding the defective constitution of the Commission, on the ground that the Commission was unable at the time to act with its proper constitution, due to the then prevailing anomalous situation in the Island, and it, therefore, was entitled to act, as found to be constituted, by virtue of the "law of necessity".

The extent of the possibility of resorting to the "law of necessity" has been discussed exhaustively in the case of the *Attorney-General and Ibrahim* (1964 C.L.R. 395) and, bearing in mind the relevant criteria laid down therein, I have reached the conclusion that the circumstances of this Case fall far short of coming within the ambit of the requirements which would enable legislative or administrative action to be validly taken by virtue of the said "law of necessity". In reaching this conclusion I have taken into account, *inter alia*, that the action taken by the Commission in dismissing Applicant was not of a transient but of final nature—and not a temporary measure such as the interdiction or any other mode of suspension of the Applicant; that the Commission itself did not

*Reported in this part at p. 252 (*ante*).

appear to treat Applicant's disciplinary treatment as an urgent matter of necessity—(see also the evidence of Mr. Stathis about his aforesaid interview with the Chairman of the Respondent Commission)—and that when the Commission eventually decided to call the Applicant before it this was more than six months after Applicant's failure to obey instructions; that in the meantime the Applicant had been allowed to work normally without being either interdicted or otherwise suspended—such a course not being at all consistent with the existence of an urgent necessity to discipline Applicant in the interests of the service.

For all the above reasons, I find that the decision to dismiss Applicant has to be declared to be *null* and *void* and of no effect whatsoever on the ground that it was taken while the Commission was not properly constituted, from the point of view of quorum.

Having heard this Case extensively on its substance, I think it is proper to give shortly my finding on this aspect, too:

I have reached the conclusion that, on the material before it, the Commission was reasonably entitled to decide as it did and that no ground exists calling for interference with its decision.

It was Applicant himself who failed to disclose the full reasons for his conduct to the Commission. His explanation that he did not do so because the Chairman refused to allow what he said not to be recorded in the minutes cannot, in my opinion, be of any assistance to him in the matter, because the Chairman could not properly direct that any material part of the proceedings before the Commission be excluded from the minutes.

By not putting his case fully before the Commission, it is quite possible that Applicant has deprived the Commission of knowledge of material considerations and has, thus, let the Commission to decide on the matter without having such considerations before it, but, so long as it is Applicant's own conduct which led to this situation, he cannot rely on it in order to attack the validity of the Commission's *sub judice* decision. An officer appearing before the Commission on a disciplinary charge cannot refrain from putting fully his case before the Commission, of his own volition, and

then come before this Court and attack the decision of the Commission on the ground that the Commission was not aware of the full facts of his case.

Had, therefore, the Commission been properly constituted at the time I would not have been prepared, otherwise, to *annul* its decision. As things stand, however, this decision has, for the reasons given earlier in this Judgment, to be annulled on the ground of lack of a proper quorum.

It will be now up to the Commission to examine again the case of Applicant. In this respect I think it is useful to draw attention to the remarks of this Court in *Kallouris and The Republic* (1964 C.L.R. 313 at p. 324), both as regards the basis of the new consideration of the matter by the Commission and as regards the possibility of considering to give retrospective effect to any new decision to be reached—and of course I am not expressing any opinion as to what such decision should be, one way or another.

Regarding the basis of the new consideration of the matter by the Commission I might add that though the case of Applicant has to be considered on the basis of the facts existing when it first came to deal with Applicant's case in May, 1964, there is nothing to prevent, of course, the Commission from hearing from Applicant a fuller explanation, regarding the "security reasons", than the one he has given the Commission originally. Such "security reasons" are facts which, if the Commission finds them to have existed, they were in existence before the 12th May, 1964, when the Commission came to deal originally with the charges against Applicant. So anything that Applicant may be able to place before the Commission with regard to such "security reasons" would be material which the Commission would be properly entitled to take into account.

Regarding the extent to which the Applicant was prevented by the said "security reasons" from obeying the instructions of his superiors, I have decided not to express any opinion on the evidence adduced before me, because I wish to leave the Commission entirely free and unfettered to decide the matter for itself after hearing, if necessary, the witnesses who have testified in Court, or any other evidence, too.

On the question of costs I have decided that in the circumstances Applicant is not entitled to an order for costs,

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having failed to put his whole case before the Commission at the proper time and I, therefore, direct that each party should bear its own costs.

Decision complained of declared null and void. Each party to bear its own costs.