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[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION.

SOFOCLES CONSTANTINOU AND OTHERS,

Applicants.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 63/65, 70/65 & 78/65)

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Public Officers—CYTA posts—Promotions—Promotions to the post of Telegraph Supervisor—Validity—Validity of the said promotions by the respondent Public Service Commission upheld—Legitimate interest within Article 146, paragraph 2, of the Constitution—Requirements of the relative schemes of service fulfilled—Educational qualification of Interested Party—The Respondent Commission has to be satisfied as to its authenticity—But it cannot pronounce on its essential validity from the scholastic point of view—Seniority—Seniority is only one of the relevant factors to be considered, but not the decisive one—Recommendations of CYTA not adopted by the respondent Commission—Its decision however is not invalid on that ground, because there has been a strong recommendation by the General Manager of CYTA—Public Service Commission—Wrong constitution and lack of quorum at the time the sub judice decisions were taken—Decisions invalid on that ground, validated by the subsequent enactment of the Public Service Commission (Temporary Provisions) Law, 1965, (Law No. 72 of 1965 enacted on the 16th December, 1965)—Effect of that law on the sub judice decisions, the recourses in respect of which have been filed on the 24th March, 5th April and 15th April, 1965, respectively—In view of the fact that the objection on the ground of wrong constitution and lack of quorum was for the first time raised at the hearing of the present recourses i.e. after the enactment of the aforesaid law, and not in the relative Applications, filed as already stated prior to the enactment of that law No. 72 of 1965—The said belated objections cannot succeed for the reasons given by this Court in Theofylactou and the Republic (reported in this Part at p. 801, ante)—See also, below.

Public Service Commission—Wrong constitution and lack of quorum
—Law No 72 of 1965 section 5—See above

Seniority—Promotions—Not the decisive factor—See under the heading Public Officers, above

Educational Qualifications—Powers of the Public Service Commission in relation thereto—Confined to being satisfied as to the authenticity of the said qualifications—And not to pronounce on its intrinsic merits—See, also under Public Officers above

Administrative and Constitutional Law—Article 146, paragraph 2, of the Constitution—Legitimate interest—See under Public Officers above

Administrative and Constitutional Law—Article 146 of the Constitution—Recourse thereunder—Whether and how an administrative decision, ex hypothesi invalid the subject matter of a recourse under Article 146 can be validated by subsequent legislation—The Public Service Commission (Temporary Provisions) Law 1965 (Law No 72 of 1965), section 5—See under Public Officers above

Promotions—Recommendations—Absence of recommendation by the appropriate Administrative Authority—Effect—See under Public Officers above

Recommendations—By the General Manager of CYTA—But not by the Board thereof, which in fact recommended a person other than the person promoted by the Public Service Commission—See under Public Officers above

Administrative Law—Excess or abuse of powers—The Court not satisfied that the respondent acted in excess or abuse of powers—Onus—The onus is on the applicant to satisfy the Court that there has been an excess or abuse of powers

Abuse and Excess of powers—Onus—See immediately above

Cases referred to

Theofylactou and The Republic (reported in this part at p 801 ante, applied),

Saruhan and the Republic 2 R S C C 133

Theodossiou and the Republic 2 R S C C 42, at p 48, applied.

The facts sufficiently appear in the judgment of the Court.

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Recourse.

Recourse against the validity of a decision of the Respondent Public Service Commission concerning appointments, by way of promotion to the post of Telegraph Supervisor, in the service of the Cyprus Telecommunications Authority (CYTA).

E. Vrahimi (Mrs.) for Applicants in Cases 63/65 and 78/65.

A. Triantafyllides for Applicant in Case 70/65.

M. Spanos, Counsel of the Republic, for the Respondent.

C. Phanos and K. Michaelides for Interested Party Kakomanolis.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANTAFYLLIDES, J.: The Applicants in Cases 70/65 and 78/65 challenge the validity of a decision of the Respondent Public Service Commission appointing, by way of promotion, to the post of Telegraph Supervisor, in the service of the Cyprus Telecommunications Authority (CYTA), the Interested Parties C. Antoniou and H. Kakomanolis. The Applicant in Case 63/65 challenges the same decision only to the extent to which it concerns the appointment of Interested Party Kakomanolis.

In view, therefore, of their having the same subject-matter, and involving common issues, these three Cases were heard together; and it is proposed now to give one Judgment for all three of them.

The Applicant in Case 70/65 challenges, also, another decision of the Commission, in relation to the filling of vacancies in the post of Telegraph Revisor. As this is a totally different matter this part of Case 70/65 has not been made part of the joint hearing and has been postponed to be heard separately later.

The relevant history of events is, in short, as follows:—

On the 12th November, 1964, two vacancies in the post of Telegraph Supervisor were advertised, internally, in CYTA,

for the general information of all interested members of its staff.

As a result eight candidates applied for appointment, including the three Applicants in the present proceedings and the two Interested Parties. The applications of all five have been produced and they are *exhibits 14A to 14E*.

On the 16th January, 1965, a meeting was held of the CYTA Selection and Promotion Board consisting of representatives of both the Authority and The Trade Union of the CYTA staff. One of the subjects on the agenda was the consideration of the recommendations of the Management of CYTA for the filling of the two vacancies in question. The members of the Board had before them particulars in relation to the service and qualifications of all candidates (see the relevant minutes, *exhibit 4*).

The representatives of the Management proposed for appointment Interested Party Antoniou and Applicant Constantinou (in Case 63/65). They explained that the main consideration which led to such a view was the two said candidates' ability to carry out the relevant duties better than anyone else, but that seniority and academic qualifications, relevant to the posts concerned, had also been taken into account. The representatives of the Trade Union agreed with the proposal of the Management. The Board noted, however, in its minutes, also, that Interested Party Kakomanolis and Applicant Christodoulides (in Case 70/65) were fit in every respect to occupy the post of Telegraph Supervisor.

On the 30th January, 1965, the Authority transmitted to the Commission the applications of all candidates together with a comparative table showing their years of service, salary scales and qualifications (see *exhibit 13*) and a copy of the relevant minutes of the CYTA Selection and Promotion Board. A covering letter (*exhibit 5*) contained recommendations by the Authority in favour of Interested Party Antoniou and Applicant Constantinou (in Case 63/65), thus, endorsing the aforementioned decision of the CYTA Selection and Promotion Board.

On the 11th February, 1965, the Commission met to consider the filling of the two vacancies, with the General Manager of CYTA, Mr. Stylianides, and the Secretary of

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CYTA, Mr. Kokkinides being present; Mr. Kokkinides had also been the Chairman of the CYTA Selection and Promotion Board at its meeting of the 16th January, 1965, and it was he who had proposed to the Board, on behalf of the Management, the two recommended candidates, Antoniou and Constantinou.

During the exchange of views at the said meeting of the Commission, on the 11th February, 1965, the representatives of CYTA came under "exhaustive questioning by the Members of the Commission about each one of the candidates" and it appears (see the relevant minutes, *exhibit* 6) that Mr. Stylianides, the General Manager, described the two Interested Parties as "A 1 candidates". "Bearing particularly in mind" this, the Commission decided that the Interested Parties "were on the whole the most suitable candidates" and decided to appoint them with effect from the 15th February, 1965.

On the 19th February, 1965 Mr. Kokkinides, the Secretary of CYTA addressed a letter (see *exhibit* 12) to the Chairman of the Commission, stating that the Authority had noticed that its recommendations had not been followed in the case of Applicant Constantinou (in Case 63/65) and that it understood that this Applicant was about to challenge in court the Commission's decision. No request was made, however, in the said letter, for a reconsideration of the matter by the Commission.

The present recourses were filed on the 24th March, 5th April and 15th April, 1965, respectively.

At the commencement of the hearing of such recourses, an objection was taken, by counsel appearing for Interested Party Kakomanolis, that the Applicants in Cases 63/65 and 78/65 possessed no legitimate interest, in the sense of Article 146(2) of the Constitution, entitling them to institute the present proceedings, inasmuch as they were not qualified for appointment under the relevant scheme of service (see *exhibit* 1A).

After hearing all parties, as well as evidence, on this preliminary matter, the Court gave a Ruling thereon on the 19th February, 1966,* by which it was held that the Applicant in Case 63/65 does possess the requisite legitimate interest in view of the fact that he was entitled, in all the circum-

*Ruling reported in this Part at p. 174, *ante*.

stances, to be taken into consideration for appointment to the post in question. The Applicant in Case 78/65 was also held, by such Ruling, to be a qualified—under the scheme of service—candidate in all respects, except in so far as qualification (a), “graduate of a recognized secondary school”, was concerned; this matter was left open to be decided after hearing further evidence.

The contents of the said Ruling need not be repeated in this Judgment, but they should be taken, nevertheless, as being adopted hereby.

It appears convenient to deal finally, here and now, with the issue of the legitimate interest of Applicant Arsalides (in Case 78/65), from the point of view of his possessing or not qualification (a), under the relevant scheme of service.

The Director of Education, in the Ministry of Education, Mr. Cleanthis Georghiades, who had given certain evidence, prior to the said Ruling, regarding the nature of a graduation certificate granted to this Applicant by a Greek school in Egypt, has been recalled and gave further evidence, as a result of which it appears that the said certificate (*exhibit 3*) is a certificate granted by a school equivalent to a five-form secondary school in Cyprus, such as was, at the time, the Samuel School in Nicosia; and as testified to, earlier, by Mr. Georghiades, the Samuel School was a recognized school of secondary education.

I am, therefore, quite satisfied that it was reasonably and properly open to the Commission to consider this Applicant as a qualified candidate, and particularly as possessing the required secondary education qualification; thus, he has the requisite legitimate interest entitling him to proceed under Article 146 of the Constitution against the sub-judice decision of the Commission.

It is necessary to deal, next, with the objection of counsel for Applicants that when it took its said decision the Commission was not properly constituted. Such objection has not been raised in the Applications, but it has been raised only at the hearing stage, after the enactment in the meantime of the Public Service Commission (Temporary Provisions) Law (Law 72/65), and particularly, section 5 thereof. In the circumstances, and for the reasons given in the Judgment of this Court in *Theofylactou and The Republic* (case 225/65).

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not reported yet)*—in relation, there, to a belated objection regarding the quorum of the Public Service Commission—I hold that the objection regarding the constitution of the Commission cannot succeed, as and when taken in the present proceedings.

Coming now to the validity of the appointments, as such, of the Interested Parties, we note that it has been strongly contended, by Applicants, that Interested Party Kakomanolis was appointed in contravention of the relevant scheme of service, in that he does not, in fact, possess a *valid* graduation certificate establishing that he graduated properly from the Samuel School, Nicosia, at the end of the school-year 1946–1947; as already stated, this school was a recognized secondary school.

It has become common ground, during the proceedings, that Interested Party Kakomanolis did not actually attend lessons at the said school, as a pupil, during the school-years 1945–1946 and 1946–1947, and that from 1945 onwards he was abroad at Haifa. The then headmaster of the Samuel School, Mr. Efthyvoulos Anthoulis, has given evidence, and has stated that he was sending to Interested Party Kakomanolis, at Haifa, the books necessary for studying the curriculum of the fourth and fifth forms of the school, and that twice a year he was also sending him examination papers, which the said Interested Party would answer and return to the school for correction; on the basis of such examination papers, this Interested Party was, eventually, granted a graduation certificate (first in the style of *exhibit 8*, and then, when it got torn, in the form of *exhibit 7*, as the older type of certificate was no longer available).

Counsel for Applicants have argued that *exhibit 7* is not a valid certificate of graduation from a school of secondary education and that, in any case, the Commission has been misled into thinking that it was a certificate granted after continuous and normal studies at the school in question.

In approaching this issue it must not be lost sight of that Interested Party Kakomanolis obtained the said certificate at a time entirely remote from, and unconnected with, the subject-matter of the present Cases. There can be no doubt, on the evidence of Mr. Anthoulis, which I do accept as reliable, that

* Reported in this Part at p. 801, *ante*.

such certificate was issued only because, at the material time, the said Mr. Anthoulis, as the headmaster of the Samuel School, and in the exercise of his relevant powers and discretion, thought that it was proper to do so. The circumstances leading to the issue of the said certificate may have been exceptional; but, in my opinion, the Court, in proceedings such as the present, has no power to decide on the essential validity of such certificate, by examining whether or not it was properly issued, from the scholastic point of view, in 1947, at a time, as pointed out, totally unconnected with the sub judice matter.

Moreover, and in any case, it has been established, by the evidence of Mr. Anthoulis, that it is possible for a certificate of graduation from a secondary school to be issued without the pupil concerned having *ever* attended lessons, at all, at a particular school, if such school is satisfied that the requisite standard of knowledge has been achieved. I have in mind in saying this the case of a certain Andreas Vlachos, who was allowed, by decision of the appropriate educational authorities, to sit for examinations at the Economics Gymnasium of Nicosia—of which Mr. Anthoulis is now the headmaster— so as to be enabled to obtain, if successful, a graduation certificate, (see *exhibit 9*); as Mr. Anthoulis has stated in evidence the said person was eventually granted such certificate, though he had never been a pupil of the Economics Gymnasium; thus, it appears, by analogy, that what Mr. Anthoulis did in the case of Interested Party Kakomanolis was not something educationally impossible.

It is true that the Commission neither knew nor could have known of the manner in which the certificate concerned was granted to Interested Party Kakomanolis, but had it known I do not think that it would have been entitled to treat the said Interested Party as not possessing a valid secondary education qualification, because the Commission is not an organ competent to decide on the essential validity of such a qualification. It is up to the appropriate school authorities to decide whether to grant or to refuse a graduation certificate in a given case; and once such a certificate has been granted the Commission cannot disregard its existence. The graduation certificate of Interested Party Kakomanolis was a *fact* which the Commission *had* to take into account in relation to the question of his satisfying the requirements of the scheme of service. When faced with an educational qualification the Commission has to be satisfied as to its authenticity

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but it cannot pronounce on its essential validity from the scholastic point of view; and no question of the authenticity of the relevant certificate has arisen.

I am, therefore, of the opinion that it cannot be said that had the Commission known the true facts about the way in which *exhibit 7* was granted to Interested Party Kakomanolis it could, or should, have treated him as not being a qualified candidate, through not possessing the relevant qualification prescribed under the scheme of service; so no question arises of annulling his appointment on the basis of such a consideration.

It is correct that in the case of *Saruhan and The Republic* (2 R.S.C.C. p. 133) the Supreme Constitutional Court refused to confirm an appointment, and indicated that it was the duty of the Commission to reconsider the matter, because the officer concerned had misinformed the Commission about the duration of his university studies with a view to qualifying as a dentist. That was a special course adopted in the particular circumstances of that case, especially in view of the fact that two members of the Commission had said in evidence that had they been informed of the true—beyond the normal—duration of the studies of the officer concerned, they might, or would, have been influenced in deciding not to select him for appointment; but no such evidence exists at all in the present proceedings.

There is another issue arising out of the manner in which *exhibit 7* was granted to Interested Party Kakomanolis and which may be conveniently dealt with now: It appears from the evidence of Mr. Protestos that the Commission preferred this Interested Party to Applicant Constantinou (in Case 63/65), who had been recommended by CYTA, because it considered the former as better educated than the latter. I have had, therefore, to examine whether the Commission would have reached necessarily the same conclusion had it known of the true position regarding the nature of the actual secondary education studies of Interested Party Kakomanolis.

Having considered all pertinent factors, including the relevant applications for appointment, as well as the comparative table of candidates (*exhibit 13*), I am of the view that

it could not be reasonably said that the Commission treated the Interested Party as better educated than the Applicant because the former appears, in *exhibit 13*, to have gone to secondary school for five years, whereas the latter appears to have gone to secondary school only for four years. What, in general, renders the Interested Party *undoubtedly* better educated than the Applicant is the fact that in addition to Greek the Interested Party knows good English and French and can also speak Arabic and Hebrew (see *exhibit 14A*) whereas the Applicant knows only English in addition to Greek (see *exhibit 14B*)—and knowledge of languages is obviously a relevant qualification for persons employed in a Telegraph Office and dealing with cables from, and to, overseas countries. Also, the Interested Party concerned states in his application that he has passed all the examinations concerning International Telegraph Regulations, whereas there is nothing of the sort in the application of the Applicant in question.

I see, therefore, no sufficient reason to interfere with the appointment of Interested Party Kakomanolis on any ground connected with his secondary school studies.

There remains, next, the general issue that, on the whole, the Applicants ought to have been preferred, for promotion, to the Interested Parties.

Regarding seniority, according to the evidence of the Personnel Officer of CYTA, Mr. Nicos Markides—which I accept as giving the correct picture to be derived from official records—Applicants Constantinou (in Case 63/65) and Arsalides (in Case 78/65) became Telegraphists, 1st grade, on the 1st January, 1955, and Applicant Christodoulides (in Case 70/65) became a Telegraphist, 1st grade, on the 1st July, 1956. Interested Parties Antoniou and Kakomanolis became Telegraphists, 1st grade, on the 1st July, 1956, also, but they have slightly longer overall service than Applicant Christodoulides. Thus, on the basis of the CYTA official records, Applicants Constantinou and Arsalides appear to be senior, by about a year and a half, to the Interested Parties, as regards service in the post of Telegraphist, 1st grade, from which eventually the Interested Parties were promoted to Telegraph Supervisors, in preference to Applicants.

Applicant Arsalides (in Case 78/65) contends that the

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CYTA records are wrong and that in fact he became Telegraphist, 1st grade, in 1953, and not in 1955. It is correct that in a letter addressed to the Commission, by the then Personnel Officer of CYTA Mr. Kokkinides, on the 1st August, 1963, (see *exhibit* 15) it appears stated that this Applicant was promoted to Telegraphist, 1st grade, on the 1st January, 1953.

Without coming to any conclusion on the question of the year in which Applicant Arsalides became a Telegraphist, 1st grade, I would be prepared, in all fairness to him, to take the most favourable for him view, and, for the purposes of this Judgment, assume that he became a Telegraphist, 1st grade, in 1953, thus, rendering him more senior, in such post, than any of the Interested Parties, and with a difference between them of over two and a half years.

But as it has been repeatedly stressed in past Judgments, seniority is not the decisive factor, though it is, indeed, a very relevant factor. The paramount duty of the Commission is to select the most suitable candidate after paying due regard to all relevant considerations (*Theodossiou and The Republic*, 2 R.S.C.C. p. 42 at p. 48). Bearing in mind that Interested Party Antoniou was recommended for appointment by the Selection and Promotion Board of CYTA, which adopted in this respect the views of the Management of CYTA, whereas Applicant Arsalides was not so recommended at all, I find that it was reasonably open to the Commission to prefer Interested Party Antoniou to Applicant Arsalides, in spite of the seniority of the latter over the former; therefore, I am not satisfied that, in this respect, the Commission acted in excess or abuse of powers; and the burden of so satisfying the Court lies always on the person making the recourse (see, *inter alia*, *Saruhan and The Republic*, supra).

The same holds good, a fortiori, when one comes to consider the preference for Interested Party Antoniou over Applicant Christodoulides (in Case 70/65), who is not senior to the said Interested Party and who was not recommended for promotion by the CYTA Management or the CYTA Selection and Promotion Board, like Interested Party Antoniou, but who was only found by the said Board, by way of a postscript, to be, also, fit in every respect for the post in question.

No need arises of dealing with the preference for Interested Party Antoniou over Applicant Constantinou (in Case 63/65)

because the said Applicant does not challenge at all the validity of the appointment of this Interested Party.

With regard to Interested Party Kakomanolis it is true that he was not recommended, initially, by the CYTA Management or by the CYTA Selection and Promotion Board, but was only found to be, also, fit in every respect for the post in question by the said Board, in the same way as Applicant Christodoulides (in Case 70/65). He is junior to Applicants Constantinou (in Case 63/65) and Arsalides (in Case 78/65).

Had matters stood at that, without anything further, I could possibly be inclined to find that, in the absence of any adequate reason, it was not reasonably open to the Commission to prefer Interested Party Kakomanolis to Applicant Constantinou, who was the senior one of the two and who had, also, been recommended by the CYTA Management and the CYTA Selection and Promotion Board; *but* at the very meeting of the Commission when the promotions in question were decided upon, the General Manager of CYTA Mr. Stylianides, on being questioned by the Commission, has stated in no uncertain terms that Interested Party Kakomanolis was an "A 1 candidate"; it is, thus, in my opinion, not possible to hold that it was not reasonably open to the Commission to prefer Interested Party Kakomanolis to Applicant Constantinou, bearing in mind, too, that, though not officially recommended, Interested Party Kakomanolis had been found by the CYTA Selection and Promotion Board to be fit in every respect for the post in question and has also been regarded—and rightly in my opinion—by the Commission as being better educated than Applicant Constantinou; therefore, I am not satisfied that in this respect, either, the Commission has acted in excess or abuse of powers.

The same holds good, a fortiori, for obvious reasons, with regard to the preference of Interested Party Kakomanolis over Applicant Christodoulides, who stood, more or less, on an equal footing with him, and over Applicant Arsalides, who had not been recommended at all.

There remain, to be dealt with, two issues relating to particular Applicants:—

First, it has been specifically complained, in his recourse (Case 78/65), by Applicant Arsalides that he has been wrongly not recommended for appointment by CYTA.

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As it appears from the evidence of Mr. A. Michaelides, his superior in the Central Telegraph Office, Nicosia, this Applicant was not recommended by him—and consequently not recommended by the Management—because he did not consider him as possessing the required experience for the discharge of the duties and responsibilities of a Supervisor in the Central Telegraph Office, to which the Applicant was transferred from the Flight Information Centre of the Nicosia Airport, in 1961.

The Applicant, on the other hand, contends that he was holding the post of Telegraphist, 1st grade, at the said Centre, and that the staff of the Centre and the Telegraph Office is interchangeable; therefore, he ought to have been recommended as being the most experienced, of all, as a Telegraphist, in view of his seniority.

I am of the opinion that it was not, at all, improper or unreasonable for Mr. Michaelides to regard this Applicant as not possessing the required experience *in the work of the Central Telegraph Office*, and to recommend others who had worked much longer there; he was not bound to regard past similar work by Applicant, as a Telegraphist, 1st grade, in another branch of the service, as being the required experience in the work of the Central Telegraph Office.

I can see that Applicant Arsalides may have been prejudiced through leaving the Flight Information Centre and being moved to the Central Telegraph Office, in that he, possibly, lost his chance of advancement in the former, without gaining, at once, as good a chance in the latter, but this fact cannot invalidate, in any sense, the sub judice decision of the Respondent Commission; Applicant Arsalides could have challenged his 1961 transfer by appropriate legal steps, if he had so wished. I cannot grant him relief in this respect, directly or indirectly, in the present proceedings.

Secondly, it has been argued, on behalf of Applicant Christodoulides (in Case 70/65), that, though he is more educated than both the Interested Parties, he was, unjustifiably, not selected for appointment because it was considered that his qualifications rendered him more suitable for work other than that of a Telegraph Supervisor. I am of the opinion that it was reasonably open to the Commission, in the light of all relevant circumstances, to regard the rather greater educational qualifications of Applicant Christodoulides as

being more relevant to some other kind of work, and not such as to weigh decisively in his favour with regard to the post in question; therefore, it cannot be said that the Commission in doing so has acted in excess or abuse of powers.

In the result, having specifically, as stated in this Judgment, dealt with the main issues raised in these proceedings, and having weighed everything that has been submitted by the parties, I am of the opinion that these recourses fail and have to be dismissed.

Before concluding this Judgment, I might add that I have not included herein, as originally intended, my reasons for a Ruling given on the 12th April, 1966—on dismissing a procedural application made by counsel for the Applicant in Case 70/65—because the course of the proceedings, in the meantime, has rendered such Ruling of no further consequence.

I have decided, in all the circumstances of these Cases, not to make any order as to costs; subject, of course, to any order for costs already made, not being affected.

Application dismissed.

Order for costs as aforesaid.

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