

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS ARKATITIS AND OTHERS (No. 1),
Applicants,
and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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NICOS
ARKATITIS
AND OTHERS
(No. 1)
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 26/66).

Administrative Law—Records or minutes of a collective organ, in the present case the Public Service Commission—Evidence—Oral evidence tending to supplement the relevant minutes or records—The issue of its admissibility—In a proper case, material not found in the said minutes may be admissible.

Evidence—Oral evidence tending to supplement minutes or records of a collective organ—See above.

Records or minutes—Of a collective organ—Material not found therein may be admissible by oral evidence—See above.

Cases referred to:

Georgiades (No. 2) and The Republic (1965) 3 C.L.R. 473.

Ruling.

Ruling on an objection taken by counsel for the Applicants to a question put to a witness by counsel for the Respondent.

A. Triantafyllides, for the Applicants.

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

L. Clerides, for the Interested Party.

Cur. adv. vult.

On the 14th January, 1967, the Court delivered the following Ruling:

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TRIANTAFYLLIDES, J.: On the 23rd December, 1966, while Mr. Ioannis Stathis, the Acting Auditor-General, was giving evidence in this Case, an objection was taken by counsel for the Applicants to the following question which was put to the witness by counsel for Respondent: "Did you express before the Commission any views about the comparative merits of the candidates?"

At the time Mr. Stathis was giving evidence in relation to his presence at a meeting of the Public Service Commission on the 6th December, 1965, in his capacity as the Head of the Department in which vacancies were to be filled.

Counsel's for the Applicants objection was based on the ground that no material which is not found in the relevant records of the Commission is admissible to supplement, qualify or otherwise affect the recorded decision of the Commission, (*exhibit 4*).

The question of evidence being adduced in relation to decisions of the Commission has been dealt with, to a certain extent, in a Ruling given in *Georghiades (No. 2) and The Republic* (1965) 3 C.L.R. 473. It is a question arising due, partly, to the non-existence in force of legislation governing the proceedings of the Commission, and, particularly, of legislation providing for the keeping, and production, of such records of the Commission as are required by the exercise of the jurisdiction under Article 146 of the Constitution.

The relevant minutes of the Commission (*exhibit 4*) read as follows:

"2. *Filling of vacancies, Audit Office.*

Mr. J. Stathis, Acting Auditor-General, present.

Examiner of Accounts, 2nd Grade.

The Commission in filling the vacancies in the post of Examiner of Accounts, 2nd Grade, and after considering the qualifications, experience and merits of Messrs. E. Kaoullides and J. Papageorghiou who had been seconded to the post of Examiner of Accounts, 2nd Grade, decided that Mr. E. Kaoullides be promoted substantively to that post w.e.f. 1.1.66.

The Commission considered the qualifications, experience and merits of Examiners of Accounts, 3rd Grade, as reflected in their Annual Confidential Reports, and also the case of Mr. G. Epiphaniou, Assistant Examiner of Accounts who was taken over from the dissolved Greek Communal Chamber. Under the Chamber, Mr. Epiphaniou held the post of Auditor, 3rd Grade, and the next higher post under the Chamber for which he could be considered for promotion was that of Auditor, 2nd Grade. This post was equivalent to the post of Examiner of Accounts, 2nd Grade, in the Audit Office. The Commission having regard to these facts decided to consider Mr. Epiphaniou as a candidate for the post of Examiner, 2nd Grade, along with the Examiners, 3rd Grade.

The Commission after consideration, decided that the following be seconded to the post of Examiner of Accounts, 2nd Grade, w.e.f. 1.1.66:

1. A. Ioannou
2. G. Epiphaniou".

It is clear, from a mere perusal of the above set out minutes of the Commission, that they are not a verbatim record of the relevant proceedings at the Commission's meeting of the 6th December, 1965. It is equally clear, on the other hand, that Mr. Stathis was present at the said meeting; and he has, already, given evidence that he expressed, at the time, his views regarding the Applicants and the Interested Party.

In view of these I am of the opinion that the question of counsel for Respondent, which has been objected to by counsel for Applicants, is a proper one, as tending to complete the picture by placing before the Court all the material on the basis of which the Commission has reached its *sub judice* decision.

Of course, since the Commission has not recorded expressly in its minutes that the Interested Party was preferred to the Applicants because of a recommendation to that effect by Mr. Stathis, evidence of such a recommendation would be of little weight, if relied upon, to the exclusion of any other proper consideration, to establish the decisive reason for the Commission's relevant decision; the Commission must be assumed to have recorded in its minutes what it has deemed

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to be of substance in relation to its deliberations and subsequent decision (see *Georgiades and The Republic, supra*) and it has not recorded any recommendation, such as above, by Mr. Stathis.

For the above reasons, and in the light thereof, I have decided to allow the question of counsel for Respondent which has given rise to this Ruling.

Order in terms.