IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTIGONI G. ERACLIDOU AND ANOTHER,

Applicants,

and

THE COMPENSATION OFFICER, THROUGH THE MINISTRY OF LABOUR AND SOCIAL INSURANCE,

Respondent.

(Case No. 160/66*).*

Pneumoconiosis—Compensation—Right to—The Pneumoconiosis (Compensation) Law, 1960 *(Law No.* 11 *of* 1960*), sections* 2,7 23*(a)(b) and* 40*—Finding of the Pneumoconiosis Medical Board that the cause of death of the deceased is of unknown origin—Not reached in a defective manner—Up to Applicants to satisfy the Court that the cause of deceased's death is one establishing their rights to compensation under the Law—See, also, below.*

Pneumoconiosis—The Pneumoconiosis (Medical Arrangements) Regulations, 1961, *reg.* 13.

Supreme Court—Competence—Powers to review a decision under the provisions of section 23 *(a) of the aforesaid Law No.* 11 *of* 1960*—Not wider than those possessed under Article* 146 *of the Constitution—Therefore, this Court in the exercise of its revisional jurisdiction under Article* 146, *cannot go into the scientific merits of a finding of a technical nature such as the aforesaid of the Pneumoconiosis Medical Board—The Court can only examine whether in making such finding the Board has acted in a proper manner from the point of view of constitutionality, legality and the principles governing excess or abuse of powers.*

Administrative Law—Composite administrative action—The decision-finding of the Board in this case together with the sub judice decision of the Respondent Compensation Officer is a composite act—Therefore the validity of the former is also material.

Composite administrative action—See immediately above.

Administrative and Constitutional Law—Recourse under Article 146 *of the Constitution—Powers of review vested in the Court in a recourse thereunder—See above under Pneumoconiosis; Supreme Court.*

Review—Powers of review of the Supreme Court under Article 146 *of the Constitution—Extent—See above.*

Words and Phrases—"Pneumoconiosis" in section 2 *of the Pneumoconiosis (Compensation) Law* 1960, *(Law No.* 11 *of* 1960).

Costs—Award to unsuccessful Applicants of part of their costs.

Practice—Order of the Court under rule 11 *of the Supreme Constitutional Court Rules,* 1962.

In this case the Applicants who are the administrators of the estate of the late Georghios Eraclides and who have filed this recourse on behalf of the dependants of the said deceased, complain against a decision of the Respondent the Compensation Officer in the Ministry of Labour and Social Insurance, taken on the basis of a certificate (Exhibit 13) issued by the Pneumoconiosis Medical Board, established under the provisions of law No. 11 of 1960, (*infra*), by means of which decision he refused payment of compensation, under the provisions of section 7 of the Pneumoconiosis (Compensation) Law, 1960 (Law No. 11 of 1960), in respect of the death of the aforesaid deceased on the 8th October 1960.

The Medical Board referred to above, after several meetings and after hearing expert evidence, reached its decision on the 14th April 1966. There is no dispute that it is a fully reasoned decision. On the same date the Board sent to the Respondent Compensation Officer a certificate of death setting out its conclusion to the effect that the death of the deceased was due to "idiopathic i.e. of unknown origin chronic diffuse interstitial pulmonary fibrosis and right heart failure" and that it neither resulted from, nor was in any way accelerated by, "pneumoconiosis or pneumoconiosis accompanied by tuberculosis". On the basis of this certificate the Respondent rejected the claim of the Applicant for compensation under the aforesaid Law 11/60 and informed them accordingly by letter (Exhibit 1); as a result this recourse was filed:

It was argued by Counsel on behalf of the Applicants that under section 23 of Law 11/60 (*supra*) the Court has wider powers than those possessed by virtue of Article 146 of the Constitution; and that, in the light of all relevant circumstances, the conclusion of the Board that the lung fibrosis of the deceased was "idiopathic" i e. of unknown origin, and not due to pneumoconiosis, as defined in the aforesaid Law 11/60, is an erroneous one and has been reached without sufficient inquiry into material aspects of the matter and without attributing due weight, in particular, to the occupational history of the deceased.

Paragraphs (*a*) and (*b*) of section 23 of the Pneumoconiosis (Compensation) Law, 1960 (Law No 11 of 1960) read as follows

23(a) «ὅτι ἐδόθη ἐν ἀγνοίᾳ ἢ ἐστηρίχθη ἐπὶ σφάλματος ὡς πρὸς οὐσιῶδες γεγονός, ἢ

(b) ὅτι ἐπῆλθε γενικὴ ἀλλαγὴ τῶν περιστάσεων ἀπὸ τῆς ἡμερομηνίας τῆς ἀποφάσεως»

Paragraph 1 of Article 146 of the Constitution reads as follows.

146 1 "The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person"

In dismissing the recourse, the Court:-

Held, (1). *In Eraclides and The Republic*, 3 R.S C C 153 the Supreme Constitutional Court held that section 23 of Law 11/60 (*supra*) in so far as it conferred powers of review on the District Courts was unconstitutional as being inconsistent with Article 146 of the Constitution It is quite clear that the part of section 23 that would be applicable to the present case is paragraph (*a*) and not paragraph (*b*), thereof, and the powers of review under the former paragraph are vested, already, in this Court by virtue of Article 146 itself. Thus, I cannot agree that in deciding

this case I possess powers wider than those already provided for under Article 146 of the Constitution.

(2)(*a*) The decision of the Medical Board (*supra*) regarding the cause of death of the deceased forms, together with the *sub judice* decision of the Respondent Compensation Officer, a composite administrative action; thus, its validity is very material.

(*b*) It must be borne in mind, on the other hand, that this Court, in the exercise of its revisional jurisdiction, cannot go into the scientific merits of a finding of a technical nature, such as the finding of the Board, about the cause of death of the deceased (see, *inter alia*, Conclusions from the Jurisprudence of the Greek Council of State 1929–1959, p. 227). But the Court can, of course examine whether in adopting such finding the Board has acted in a proper manner from the point of view of constitutionality, legality and excess or abuse of powers.

(3)(*a*) In my opinion the Board, in examining the issue of the cause of death of the deceased, has acted quite properly. It has listened to the views of the Applicants' experts and has had duly in mind all relevant considerations.

(*b*) It, also, consulted, once again, as it was entitled to do so under regulation 13 of the Pneumoconiosis (Medical Arrangements) Regulations, 1961, Professor Gough, a foreign expert.

(4) The non-finding of anything in the lungs of the deceased to account for the fibrosis of his lungs seems to be indeed, the key factor in this case. In view of this the occupational history of the deceased, which is one of the most important factors, could not by itself have carried the matter to a definite conclusion favourable to the Applicants.

(5) In a case such as the present one it was up to the Applicants to satisfy the Court that the cause of the deceased's death was not of unknown origin—as found by the Board —but one establishing their right to compensation under the aforesaid Law 11/60, and that, therefore, the *sub judice* decision was misconceived. In my opinion they failed to do so.

(6) For all the foregoing reasons I see no proper cause for which I should interfere with the decision complained of; so this recourse fails and has to be dismissed.

(7) Regarding costs, I have decided, not only not to make an order for costs against the Applicants, but to take the exceptional course of directing that part of Applicants costs be borne by the Respondent—I mean the Republic—because this is a complicated case which the Applicants were fully entitled to bring before the Court for determination (see *Contopoullos and the Republic* 1964 C.L.R. 347: I assess such costs at £60.—

Application dismissed.
Order for costs in favour of
Applicants as aforesaid.

Cases referred to:

Eraclides and the Republic, 3 R.S.C.C. 153;

Contopoullos and The Republic 1964 C.L.R. 347.

Recourse.

Recourse against the decision of the Respondent refusing payment of Compensation, under the provisions of section 7 of the Pneumoconiosis (Compensation) Law, 1960 (Law 11/60).

Ph. Clerides, for the Applicants.

A. Frangos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this Case the Applicants — who are the administrators of the estate of the late Georghios Eraclides and who have filed this recourse on behalf of his dependants, i.e. his wife Applicant No. 1 and his four minor children — complain against a decision of the Respondent, the Compensation Officer in the Ministry of Labour and Social Insurance, by means of which he refused payment of compensation, under the provisions of section 7 of the Pneumoconiosis (Compensation) Law, 1960 (Law 11/60),

in respect of the death of the said deceased which occurred on the 8th October, 1960.

The said decision was communicated to Applicant No. 1 by letter dated the 27th April, 1966 (see *exhibit 1*).

It is not in dispute that, though the deceased died before the promulgation of Law 11/60, compensation for his death would be payable to his dependants had the cause of his death been within the ambit of the relevant provisions of such Law (see section 40 of Law 11/60 providing for retrospective effect as from the 1st January, 1958).

The history of events leading up to the present recourse is as follows:

The deceased had been suffering of a chest affliction for quite a number of years prior to his death in 1960; at any rate since 1953.

He had worked for nearly twenty years as an employee of mining companies; first with the Cyprus Mines Corporation (from 1928 to 1943) and later with the Hellenic Mining Company (from 1945 to 1947).

After his death a post-mortem was performed at the Nicosia General Hospital by Dr. Pambakian who has stated in evidence that he found the cause of death to be heart failure due to a lung disease, namely, lung fibrosis. In order to discover the cause of such fibrosis, and in view of the previous employment of the deceased in the mining industry, his lungs were sent to the United Kingdom for histological examination by Professor Gough, a specialist at the Institute of Pathology of the Royal Infirmary in Cardiff.

Eventually, on the basis of the findings of Professor Gough — who found diffuse interstitial lung fibrosis leading to the formation of honeycomb lung, not due to tuberculosis and without ordinary silicosis in the lungs or in the lymph glands — no compensation was paid in respect of the death of the deceased under the provisions of Law 11/60.

As a result recourse 35/63 was filed, the Applicants and the Respondent being the same as in the present Case.

That recourse was withdrawn on the 24th May, 1965, upon Respondent having undertaken to reconsider the matter and, in doing so, to consult again the Pneumoconiosis Medi-

cal Board, established under the provisions of Law 11/60 (see the relevant record, *exhibit 2*).

On the 15th June, 1965, counsel for the Applicants wrote and requested the Respondent to proceed with the reconsideration of the case (see *exhibit 6*).

On the 5th July, 1965, the Respondent replied asking counsel for the Applicants to make available any information not already disclosed, so that the said Board and the Respondent could be assisted in reconsidering the case (see *exhibit 7*).

On the 9th September, 1965, counsel for the Applicants replied to the Respondent stating that experts would be called by him to put their views to the Board when it would meet to examine the case (see *exhibit 8*).

On the 20th October, 1965, the Chairman of the Board, Dr. M. Constantinides, wrote a letter to counsel for the Applicants requesting him to place before the Board, in writing, whatever new material was available; he added that the Board might hear evidence or obtain expert advice in the matter (see *exhibit 9*).

On the 15th November, 1965, the Chairman of the Board wrote a letter to Professor Gough, recapitulating at length the salient aspects of the case and seeking his opinion in the matter (see *exhibit 3*).

On the 13th December, 1965, Professor Gough replied to the Chairman as follows:

> "Since we last corresponded I have sent the large 'sections' — of the lungs of the deceased — to Dr. Nagelschmidt and he has found nothing in them that could account for the fibrosis. I have not received a written report from him but I will endeavour to do so if you wish. Dr. Nagelschmidt has, however, now left the post he held in Sheffield and is now in a Government post in London. The position now is that even if an analysis of the ore & end product showed that it contained substances of noxious character, this would not help if these substances have not been found in the lung. The only possible circumstance, therefore, under which this could be regarded as industrial in origin, would be to imply that the toxic substance was of such a character that it produced damage to the lung but did not remain

in the lung. This is, of course, theoretically possible and can happen with certain substances but not, as far as I know, in the circumstances under which the deceased worked. I do not think there is anything more I can add.

I would say that on this evidence, based upon the law as you have set forward, both in your country and in this country, this would not be accepted as a case of true industrial disease. If, however, the claimants were to put forward the view that it is necessary for your Board to prove that it was not an industrial disease, then that would be quite different from the law in this country. I would say that the onus must be upon the claimant. One can never prove a negative". (see *exhibit 4*).

On the 15th December, 1965, counsel for the Applicants replied to the Chairman of the Board stating that there existed no material other than what had been already produced during the proceedings in the previous recourse; he requested, however, an opportunity to appear before the Board with Applicant No. 1 and expert witnesses, so as to support the claim of the Applicants for compensation (see *exhibit 10*).

On the 23rd December, 1965, counsel was notified by the Chairman that the Board would meet for the purpose on the 10th January, 1966, and that he was being invited to appear, together with his witnesses, before it for the purpose of supporting the claim of his clients (see *exhibit 11*).

The Board met on the 10th January, 1966, and heard counsel for the Applicants, Applicant No. 1, and Mr. Th. Pantazis a Government Geologist who deposed as to the ore and dust involved in the mining occupations of the deceased. Then, on the 15th February, 1966, the Board heard three expert witnesses called by the Applicants, namely, Dr. G. Partellides, Dr. I. Spyridakis and Dr. V. Lyssarides.

The decision of the Board is dated the 14th April, 1966 (see *exhibit 12*) and there is no dispute that it is a fully reasoned decision.

On the same date the Board sent to the Respondent Compensation Officer a certificate of death setting out its conclusion to the effect that the death of the deceased was due

to "idiopathic i.e. of unknown origin chronic diffuse interstitial pulmonary fibrosis and right heart failure" and that it neither resulted from, nor was in any way accelerated by, "pneumoconiosis or pneumoconiosis accompanied by tuberculosis" (see *exhibit 13*).

On the basis of this certificate the Respondent rejected once again the claim of the Applicants for compensation under Law 11/60 and informed them accordingly by means of the letter, *exhibit 1*; and as a result this recourse was filed.

During the hearing of the Case before this Court the case-file of the deceased, as kept by the Board, has been produced (see *exhibit 14*).

There have testified before the Court all the three medical experts of the Applicants — who had earlier stated their views to the Board — as well as the Chairman of the Board.

Further, the evidence given, in the proceedings of the previous recourse 35/63, by Applicant No. 1, by Dr. Pambakian, by Mr. Th. Pantazis and by Mr. M. Solomonides (the last one having testified regarding the conditions of employment of the deceased by the Cyprus Mines Corporation), was put in, by consent, as evidence in the present proceedings (see *exhibit 16*); the said Mr. Solomonides was called, also, to give additional oral evidence at the hearing of this Case.

Before the final addresses of counsel were made, counsel for the Applicants was afforded an opportunity to consider whether he would apply to recall any of his witnesses, or to call evidence in rebuttal, or seek an Order under rule *11* of the Supreme Constitutional Court Rules, 1962; he did not, however, choose to adopt any such course.

It is convenient at this stage to examine what are the powers of this Court in deciding this Case:

It has been submitted by counsel for the Applicants that such powers are to be found not only in Article 146 of the Constitution, but also in section 23 of Law 11/60 and that, therefore, the Court in the present Case has wider powers than in an ordinary recourse.

Section 23 was originally enacted with a view to the relevant competence being exercised by a District Court; later on, however, the Supreme Constitutional Court decided in

Eraclides and *The Republic* (3 R.S.C.C. p. 153) that section 23, in so far as it related to the competence of a District Court, was unconstitutional as being inconsistent with Article 146.

Even if it were to be held that, otherwise, section 23 remains in force and that the competence thereunder is now vested in this Court, within the ambit of its constitutional competence under Article 146, I do not think that it can be said that, for the purposes of a Case such as the present one, this Court is vested with powers wider than those already possessed by it by virtue of Article 146; it is quite clear that the part of section 23 that would be applicable to the present Case is paragraph *(a)*, and not paragraph *(b)*, thereof, and the powers of review under such paragraph *(a)* are vested, already, in this Court by virtue of Article 146 itself. Thus, I cannot agree with counsel for the Applicants that in deciding this Case I possess powers wider than those already provided for under Article 146.

Counsel for Applicants, who has done his very best for his clients in a most conscientious and able manner, has complained, in essence, that, in the light of all relevant circumstances, the conclusion of the Board that the lung fibrosis of the deceased was idiopathic, i.e. of unknown origin, and not due to pneumoconiosis, as defined in Law 11/60, is an erroneous one and has been reached without sufficient inquiry into material aspects of the matter and without attributing due weight to, in particular, the occupational history of the deceased.

The decision of the Board regarding the cause of death of the deceased forms, together with the *sub judice* decision of the Respondent Compensation Officer, a composite administrative action; thus, its validity is very material.

In determining this Case it has, first, not to be lost sight of that it is common ground that the definition of pneumoconiosis in section 2 of Law 11/60 is rather narrower than the notion of pneumoconiosis in medical science; for the purposes of such Law "pneumoconiosis" is defined as meaning "silicosis, siderosilicosis and asbestosis or any of these conditions accompanied by tuberculosis".

Secondly, it must be borne in mind that this Court, in the exercise of its revisional jurisdiction, cannot go into the

scientific merits of a finding of a technical nature, such as the finding of the Board, about the cause of death of the deceased (see, *inter alia*, Conclusions from the Jurisprudence of the Greek Council of State 1929-1959, p. 227). But the Court can, of course, examine whether in adopting such finding the Board has acted in a proper manner from the point of view of constitutionality, legality and excess or abuse of powers.

In my opinion the Board, in re-examining the issue of the cause of death of the deceased, has acted quite properly. It has listened to the views of the Applicants' experts and has had duly in mind all relevant considerations. It, also, consulted, once again, as it was entitled to do under regulation 13 of the Pneumoconiosis (Medical Arrangements) Regulations, 1961, Professor Gough, a foreign expert.

It appears that the Board has given quite some weight to the final views in the matter of Professor Gough, as expressed in his letter of the 13th December, 1965 (*exhibit 4*); and I can see nothing wrong in such a course.

Professor Gough has always been ready to assist in every way towards exploring adequately the question of the cause of death of the deceased; his letter of the 20th November, 1963, to counsel for the Applicants (see *exhibit 5*), leaves no room for doubt on this point. It is quite clear that Professor Gough came, eventually, to the conclusion that the cause of death of the deceased could not be identified as being of an industrial nature. It is significant to note that in his last letter regarding this matter *(exhibit 4)* he states that "even *if an analysis of the ore & end product*" — *involved in the* relevant past employments of the deceased — "showed that it contained substances of a noxious character, this would not help if these substances have not been found in the lung".

The non-finding of anything in the lungs of the deceased to account for the fibrosis of his lungs seems to be, indeed, the key factor in this Case. In view of this the occupational history of the deceased, which is one of the most important factors, could not by itself have carried the matter to a definite conclusion favourable to the Applicants. It is common ground among all the medical experts in this Case that such history had to be weighed in conjunction with the post mortem findings; thus, complaints of the Applicants, in these proceedings, such as that Mr. Solomonides was not heard in person by the Board, regarding the occupational history of

the deceased, or that the effect of his evidence on the point (given in recourse 35/63) was not correctly conveyed to Professor Gough, cannot, even if found to be substantiated, result in my finding that the relevant function of the Board was exercised in a defective manner, because I should not lose sight of the crucial fact that, in the end, the chemical analysis of the lungs of the deceased failed to establish any causal connection between the post mortem findings and the deceased's occupational history.

Nor can I hold, as submitted by the Applicants, that because scientific methods, suggested by the medical experts who testified in support of the case of the Applicants, such as X-ray diffraction and microincineration might not have been used in examining, after death, the lungs of the deceased, the *sub judice* decision should be annulled, in that the effort to trace the cause of his death, in the light of his occupational history, was not pursued sufficiently. The adequacy of the scientific methods used for the purpose is a technical matter in the merits of which this Court cannot enter; and, in any case, had I entered I would not be inclined to uphold this submission of the Applicants once an expert of the standing of Professor Gough appears in his last letter *(exhibit 4)* to think that the topic has been exhausted.

In a Case such as the present one it was up to the Applicants to satisfy the Court that the deceased's cause of death was not of unknown origin — as found by the Board — but one establishing their right to compensation under Law 11/60, and that, therefore, the *sub judice* decision was misconceived; in my opinion they have failed to do so; even one of the medical experts called by them, Dr. Spyridakis, could not reject, definitely, the finding of the Board.

For all the foregoing reasons I see no proper cause for which I should interfere with the *sub judice* decision; so this recourse fails and has to be dismissed accordingly.

I would like to conclude by observing the following:- The cause of death of the deceased has been found to be idiopathic lung fibrosis i.e. lung fibrosis of unknown origin; such cases are rare (see the evidence of Dr. Partellides); in effect, they are cases of a negative context, in the sense that they are cases in which it does not prove possible, at the existing stage of advance of medical science, to ascertain the cause or causes of the lung fibrosis; so, as medical science progresses no

doubt less and less cases of lung fibrosis will be classified as being of an idiopathic nature.

Thus, the possibility cannot be absolutely excluded that the lung affliction of the deceased was, perhaps, caused by his mining employment and that, nevertheless, the connecting link therewith could not be detected by medical science as at present advanced.

In the circumstances, it is up to the appropriate authorities to consider whether it is advisable, and possible, to make an ex-gratia payment to the dependants of the deceased.

Regarding costs, I have decided, not only not to make an order for costs against the Applicants, but to take the exceptional course of ordering that part of Applicants' costs be borne by the Respondent — the Republic — because this is a complicated Case which the Applicants were fully entitled to bring before the Court for determination (see *Contopoullos and The Republic*, 1964 C.L.R. 347. I assess such costs at £60.-

Application dismissed.
Order for costs as aforesaid.