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PAPADOPOULOS
v
REPUBLIC
(COUNCIL OF
MINISTERS)

[LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MILTIADES PAPADOPOULOS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No 148/67)

Public Officers—Terms and conditions of service—Right to free medical treatment before and after the coming into operation of the Constitution on the 16th August 1960—Right to free medical treatment enjoyed by public officers immediately before the aforesaid date safeguarded under Article 192 of the Constitution—General Order III/5 1(1)(2)—The Sponsored Patients Regulations 1960 of the 9th December, 1960, regulations 1, 6 and 7—Refusal of Respondents to reimburse Applicant for medical and other expenses incurred by him in connection with a heart operation in the United States of America—Applicant not entitled either before or after Cyprus became a Republic to have this operation performed in the United States of America at Government expense—See also, herebelow

Sponsored Patients Regulations, 1960—To the extent that they restrict the rights of Public Officers safeguarded under Article 192 of the Constitution to free medical treatment, are null and void—Regulations 1, 6 and 7

Administrative Law—Administrative decision—Due reasoning required—Wrong legal reasoning—It does not lead to annulment in cases where the decision concerned can have other legal support—Duly reasoned decision—Reasoning need not always appear on the face of a given decision—It may be sufficient that the reasons therefor are to be found in the relevant official records

Reasoning—Wrong legal reasoning—Effect—Reasons not stated in the decision concerned—But found in the official records—Effect—See above

Administrative decision—Reasoning—Wrong legal reasoning—Reasons not stated in the decision itself—See above.

By this recourse under Article 146 of the Constitution the Applicant challenges the decision of the Council of Ministers whereby they have refused to reimburse him for the medical and other expenses incurred by him for a heart operation performed in August, 1966, in the United States of America.

The Applicant is a Health Inspector in the permanent service of the Republic. He has been in the service since 1953. Article 192 of the Constitution safeguards certain rights (including rights with regard to free medical treatment) enjoyed by public officers "immediately before the date of the coming into operation of the Constitution" (*i.e.* immediately before the 16th August 1960). The relevant provision in that regard is contained in general Order III/5.1(1)(2) which was in force until the 9th December 1960. The full text of this provision is quoted in the judgment, *post*. Subsection (2) provides that "if an officer contracts an illness or sustains an injury which cannot be adequately treated in the Colony, (now in the Republic) the Governor (now the Council of Ministers) may authorize a grant to enable the officer to proceed to the United Kingdom and to receive treatment there....." On the 9th December 1960, the Sponsored Patients Regulations were published altering in some respects the aforesaid General Order to the disadvantage of public officers (see regulations 1, 6 and 7 which are quoted in full in the Judgment, *post*). Suffice it to say now that under the aforesaid regulation 7 a patient may be sent for treatment not only to the United Kingdom as is the case under G.O. III/5.1(2) (*supra*), but also to Greece and Turkey. Now, on the 28th March, 1966 a decision was taken under regulation 1 of the Sponsored Patients Regulations of the 9th December 1960, to the effect that the "patients in need of 'valve-replacement' operations should not be sponsored abroad for such operations." The reasons of that decision are explained in the minute of the relevant meeting. (The full text of this minute is quoted in the Judgment, *post*).

As a result of the aforesaid decision, a letter (*Exhibit 5*) was sent to the Applicant on the 26th April, 1966, informing him that "the Board which examines the patients for treatment abroad cannot deviate from the decision taken at the meeting of the 28th March, at which it was decided that patients in need of special operation for the valves will not be sent abroad by the Government".

Eventually, the Applicant was granted sick-leave on half pay and on the 22nd July, 1966, he proceeded to the United States to undergo an operation to correct his aortic valve disease. This operation was performed on the 4th August, 1966 and after his return to Cyprus the Applicant wrote a letter on the 3rd January, 1967, to the Director-General, Ministry of Health requesting that he be reimbursed for the expenses he incurred in America in connection with his operation. On the 26th May, 1967 the Applicant was informed by letter (*Exhibit 1*) that his request has been rejected by the Council Ministers. As a result the present recourse was filed, based on three grounds of law: (1) The decision complained of is not duly reasoned; (2) it is contrary to general Order III/5.1 which continues to govern the rights of public officers to medical treatment which are safeguarded by Article 192 of the Constitution; (3) alternatively, the above decision amounts to an abuse of power.

Dismissing the recourse, the Court:-

Held, (1). With regard to the first ground of law upon which the Applicant bases his application *i.e.* that the decision of the Respondent is not duly reasoned I may say at once that I find no merit in such ground, firstly, because the reasons therefor are to be found in the relevant official records, which are *exhibits* in this case and, secondly, because the reason for such refusal should have been quite apparent to the Applicant from the letter dated the 26th April, 1966 (*Exhibit 5*), *supra*, whereby he was informed of the decision that patients with heart trouble who required a valve replacement operation would not be sponsored abroad for such treatment (*supra*).

(2)(a) The Sponsored Patients Regulations of the 9th December 1960, at least to the extent that they restrict the right of public officers to free medical treatment contravene the provisions of Article 192 of the Constitution and to that extent they are *null* and *void*.

(b) On the other hand it is quite clear that the meeting which took place on the 28th March, 1966 and the decision reached at that meeting to the effect that patients, such as the Applicant, in need of 'valve-replacement' operations should no longer be sponsored abroad for such operations (*supra*), was the result of the provisions of regulation 1 of the aforesaid Regulations.

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(c) But at the same time it is quite clear that neither under General Order III/5.1 (2)(*supra*) nor under the aforesaid Sponsored Patients Regulations of the 9th December, 1960, was a public officer entitled to free medical treatment in the United States of America.

(3)(a) The question then falls for consideration how the fact that there is legal support for the *sub judice* decision of the Council of Ministers can affect the issue even though they disregarded this and faced erroneously their refusal to reimburse the Applicant as requested (*supra*) on a legally wrong reasoning.

(b) According to professor Kyriakopoulos on Greek Administrative Law, Vol. B. at p. 387, wrong legal reasoning does not lead to annulment if the decision can have other legal support. To the same effect are also the Decisions of the Greek Council of State No. 666/1936 reported in Vol. A.II of 1936 at p. 618, No. 1606/1950 reported in Vol. B. of 1950 at p. 128, and No. 1850/1950 in Vol. B. of 1950 at p. 321.

(c) In the light of the above I am of the view that the fact that the Applicant was not entitled either before or after Cyprus became a Republic to have this operation performed at Government expense in the United States of America is sufficient reason why the decision complained of should not be annulled.

Recourse dismissed. No order as to costs.

Cases referred to:

Constantinides and The Republic (1967) 3 C.L.R. 7;

Kasapis and The Republic (1967) 3 C.L.R. 270;

Loizides and The Republic, 1 R.S.C.C. 107;

Y. Frangides and The Republic (1966) 3 C.L.R. 181;

Decisions of the Greek Council of State:

No. 666/1936 in Vol. A.II of 1936 at p. 618;

No. 1606/1950 in Vol. B. of 1950, at p. 128;

No. 1850/1950 in Vol. B. of 1950, at p. 321.

Recourse.

Recourse against the decision of the Respondent refusing to reimburse Applicant for the medical and other expenses incurred by him for a heart operation in the United States of America.

L. Clerides, with M. Kyprianou, for the Applicant.

S. Georghiades, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

LOIZOU, J.: The relief prayed by the Applicant in this case is a declaration that the decision of the Council of Ministers refusing to reimburse Applicant for the medical and other expenses incurred by him for a heart operation in the United States of America is *null* and *void* and of no effect whatsoever.

The Applicant is a Health Inspector in the permanent service of the Republic. He has been in the service since 1953.

It would appear that as far back as 1962 the Applicant was, quite by chance, found to have a cardiac murmur but no symptoms referable to his heart. In 1966 aortic valve stenosis was diagnosed and in March of the same year, on the recommendation of the Government specialist, the Applicant was sent to Greece in order to be examined there with a view to ascertaining whether a heart operation could improve his condition. In Greece he was admitted in the "King Paul" hospital where he was detained between the 13th and the 28th March, 1966. The result of his examination and treatment are shown in the certificate *exhibit 4* and the recommendations of the specialist who treated him are summed up in the last paragraph thereof which reads as follows:-

«Έπειδή ή πάθησις του έπεπλάκη ήδη υπό άθρόας έναποθέσεις αλάτων άσβεστίου αύτη θά πρέπει νά γίνη δι' έξωσωματικής κυκλοφορίας πιθανώς δέ νά άπαιτηθή άντικατάστασις της ύπαρχούσης βαλβίδος διά πλαστικής τοιαύτης και έκ τούτου συνιστάται ή μετάβασίς του εις τήν 'Αγγλίαν ή 'Αμερικήν.»

The Applicant returned to Cyprus on the 31st March, 1966. It may be added at this stage that his travelling and medical expenses were borne by the Government of the Republic.

Three days earlier *i.e.* on the 28th March, 1966, a meeting was held in order to decide whether patients in need of heart valve replacement operations should be sponsored abroad for such operations. It is in my view pertinent to set out the short record of this meeting in full. It is *exhibit 15* in these proceedings and reads as follows:

“Record of a meeting held in the Ministry of Health on the 28th March, 1966, at 3.00 p.m.

PRESENT:

Dr. V. Vassilopoulos, Director-General.

Dr. Z. G. Panos, D.D.M.S.

Dr. D. Fessas, A.D.D.M.S. (M)

Dr. V. Kalbian, Specialist (Physician).

Dr. Kalbian referred to the Sponsored Patients Regulations whereby patients are sponsored abroad for receiving treatment for the purpose of being cured and explained to the meeting that there was a very large group of patients with serious heart defects requiring ‘valve-replacement’ operations. These operations are not indispensable for saving their lives, in accordance with the Sponsored Patients Regulations; they simply contribute only to prolongation of their lives but not to complete recovery which cannot be attained, Dr. Kalbian added.

2. In view of the fact that—

(a) there are many patients needing such sponsoring abroad; and

(b) no such operations can be performed in Greece (from Greece patients are sent over for operation either to the U.K. or to the U.S.A. and the bills are, therefore, mounting),

Dr. Kalbian urged that an urgent clear policy decision should be taken as to whether those patients should be sent abroad for ‘valve-replacement’ operations at a terrific cost of expense with very little hope of recovery.

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3. The meeting after discussing the views of Dr. Kalbian agreed that, as things are at the moment, patients in need of 'valve-replacement' operations should not be sponsored abroad for such operations".

The Sponsored Patients Regulations to which reference is made in the above quoted record were published in the Gazette of the 9th December, 1960 under No. 308. Paragraphs 1, 6 and 7 are relevant for the purposes of this case as, *inter alia*, they explain the scope of and the reason for the decision at the meeting of the 28th March, 1966. They read as follows:

«1. Ούδεις ασθενής δύναται νά συστήνεται πρὸς ἀποστολήν εἰς τὸ ἐξωτερικὸν διὰ θεραπείαν φροντίδι τῆς Κυβερνήσεως, ἐκτὸς ἑάν:-

(α) δὲν δύναται νά παρασχεθῆ ἡ δέουσα θεραπεία ἐν Κύπρῳ· καὶ

(β) Θεραπεία εἰς τὸ ἐξωτερικὸν εἶναι ἀπαραίτητος, διὰ νά σωθῆ ἡ ζωὴ του, ἢ νά σωθῆ ὁ ασθενής ἀπὸ σοβαρὰν τινα ἀνικανότητα, ἢ μειονέκτημα σωματικὸν ἢ διανοητικὸν, τὸ ὁποῖον ἄλλως θὰ τὸν καθίστα ἀχρηστον μέλος τῆς κοινωνίας.

.....

6. Κυβερνητικοὶ Ὑπάλληλοι καὶ Μέλη τῆς Κυπριακῆς Ἀστυνομίας, Χωροφυλακῆς καὶ τοῦ Κυπριακοῦ Στρατοῦ, ἢ οἱ ἐξ αὐτῶν ἐξαρτώμενοι, οἵτινες, συμφώνως πρὸς πιστοποίησην τοῦ Ἰατρικοῦ Συμβουλίου, δυνάμει τοῦ Κανονισμοῦ I, ἔχουν ἀνάγκην θεραπείας εἰς τὸ ἐξωτερικὸν, θὰ ἀποστέλλωνται εἰς τὸ ἐξωτερικὸν διὰ θεραπείαν δαπάναις τῆς Κυβερνήσεως, συμπεριλαμβανομένης τῆς πληρωμῆς τῶν ναύλων, ἀλλὰ θὰ ἀπαιτῆται παρ' αὐτῶν, ὅπως συνεισφέρουν ἔναντι τῶν ἐξόδων τὸ ποσοῦν, τὸ ὁποῖον θὰ ἐπλήρωνον ἔάν ἐτύγχανον θεραπείας εἰς Κυβερνητικὸν ἐν Κύπρῳ Νοσοκομεῖον.

7. Αἱ χῶραι, εἰς τὰς ὁποίας δύναται νά ἀποστέλλωνται οἱ ασθενεῖς, εἶναι ἡ Ἑλλάς, ἡ Τουρκία καὶ ἡ Ἀγγλία. Ἡ ἀκριβὴς χώρα, εἰς τὴν ὁποίαν θὰ ἀποστέλλεται ὁ ασθενής, θὰ ἀποφασίζεται εἰς ἐκάστην περίπτωσιν ἐπὶ τῇ βάσει τῶν πορισμάτων καὶ συστάσεων τοῦ Ἰατρικοῦ Συμβουλίου.»

As a result of the decision at the meeting of the 28th March,

1966, the letter *exhibit 5* was addressed to the Applicant on the 26th April, 1966, whereby he was informed that "the Board which examines the patients for treatment abroad cannot deviate from the decision taken at the meeting of the 28th March, at which it was decided that patients who are in need of special operation of the valves will not be sent abroad by the Government".

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On the 3rd May, 1966, the Applicant wrote to the Director of Medical Services the letter *exhibit 6* praying for a reconsideration of the decision and applying that he should be sent to England for further treatment. It does not appear from the record what the fate of his application was but one may assume that nothing came out of it for on the 6th July, 1966, he wrote the letter *exhibit 7* informing the Director of Medical Services of his intention to proceed to the United States of America for treatment and requesting that his absence in the United States be considered as a continuation of his sick-leave. In the same letter he requests a certificate in duplicate to the effect that he is a public servant. He was in fact granted sick-leave on half pay and on the 22nd July, 1966, he proceeded to the United States of America.

It appears from the letter *exhibit 8* that before Applicant wrote his letter *exhibit 7* he had already made arrangements to proceed to Richmond, Virginia, in the United States of America where he would undergo an operation to correct his aortic valve disease at the Medical College of Virginia. Both the surgery and the hospitalization would be free of any charge. On the 4th August, 1966, the operation was performed at the said hospital and the result appears in the letter dated 10th November, 1966, (*exhibit 9*) addressed by the Professor who performed the operation, Richard R. Lower M.D. to Dr. Kalbian M.D. (The date of the operation is given as the 8th April, 1966, in this letter, but this is obviously a typing error).

On the 29th November, 1966, the Applicant returned to Cyprus and on the 12th December, he wrote to the Director of Medical Services (*exhibit 10*) in connection with the resumption of his duties.

Soon after, on the 3rd January, 1967, he wrote to the Director-General, Ministry of Health (*exhibit 11*), requesting that he be reimbursed for the expenses he incurred in America in connection with his operation. By a letter dated 10th

February, 1967 (*exhibit* 12) the Director of Medical Services requested the Applicant to submit bills for such expenses. This the Applicant did on the 31st March, 1967, by his letter *exhibit* 13. On the 26th May, 1967, the Applicant was informed by the letter *exhibit* 1 that his request had been rejected by the Council of Ministers. As a result the present recourse was filed on the 2nd August, 1967.

The grounds of law upon which the Application is based as set out in the Application itself are as follows:

“Under Article 29 of the Constitution all decisions of organs exercising executive or administrative authority such as the Council of Ministers must be duly reasoned (vide *Constantinides v. Republic* (1967) 3 C.L.R. 7 and *Kasapis v. Republic*, (1967) 3 C.L.R. 270).

It is contended that the decision of Respondent is not duly reasoned and, therefore, *null* and *void*.

It is further contended that the above decision is contrary to General Order III(1)(5) which on the basis of the decision of *Dr. P. Loizides v. Republic* (1 R.S.C.C. p. 107) continue to govern the rights of public officers to medical treatment which are safeguarded by Article 192 of the Constitution. Vide also *Dr. Y. Frangides v. Republic*, (1966) 3 C.L.R. 181.

Alternatively it is contended that the above decision amounts to an abuse of power in view of the facts set-out in the recourse”.

The Opposition on the other hand is based on the following grounds of law:

“(a) Applicant does not qualify under Article 146.2 of the Constitution as there is no legal provision under which any medical expenses incurred by him abroad in the circumstances described in the Application, may be paid to him by the Government.

(b) In any case the decision complained of was properly taken after all relevant facts and circumstances were taken into consideration”.

With regard to the first ground of law upon which the Applicant bases his Application *i.e.* that the decision of the Respondent is not duly reasoned I may say at once

that I find no merit in such ground, firstly, because the reasons are to be found in the relevant official records, which are *exhibits* in this case and, secondly, because the reason for such refusal should have been quite apparent to the Applicant from the letter dated 26th April, 1966, (*exhibit 5*), whereby he was informed of the decision that patients with heart trouble who required a valve replacement operation would not be sponsored abroad for such treatment.

Regarding ground two it is common ground, indeed learned counsel for the Respondent has conceded, quite properly in my view, that the right to free medical treatment is included among the terms and conditions of service safeguarded by Article 192 of the Constitution; but he further submitted that Applicant did not qualify for the expenses he incurred to be refunded to him in view of the fact that such expenses were incurred in the United States of America (and not in any of the countries mentioned in the Sponsored Patients Regulations of the 9th December, 1960). With regard to these regulations learned counsel argued that they do not affect the material rights of public servants which existed on the 16th August, 1960, and which are safeguarded by Article 192 of the Constitution but merely lay down the procedure.

Let us then see what provision existed "immediately before the date of the coming into operation of the Constitution" with regard to free medical treatment and whether it has been altered to the disadvantage of public officers by the publication of the Sponsored Patients Regulations of the 9th December, 1960.

Such provision is contained in G.O.III/5.1(1)(2) which reads as follows:

"1.(1) All officers, whether established, unestablished or temporary, are entitled, without payment, to such medical advice and treatment including surgical operations, specialist examinations and medicines as may be available at government dispensaries and hospitals.

(2) If an officer contracts an illness or sustains an injury which cannot be adequately treated in the Colony, the Governor may authorize a grant to enable the officer to proceed to the United Kingdom and to receive treatment there, subject to the production of a certificate from the Director of Medical Services that the treatment is necessary and cannot be given in the Colony".

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By comparing the provisions of this General Order with those of the 1960 Regulations it becomes, in my view, at once apparent that this right has in some respects been altered to the disadvantage of public officers. For instance, under the new Regulations a patient will be sponsored for treatment abroad not merely when his illness cannot be adequately treated in the Republic and the treatment is necessary but only when such treatment abroad is necessary in order to save the patient's life or to save him from some serious incapacity or some bodily or mental disadvantage, which would otherwise render him a useless member of the society. In other words, patients are only sponsored for treatment abroad when such treatment is likely to cure them or save them from becoming useless members of the Society and not merely for the purpose of prolonging their lives. Furthermore, although under regulation 7 a patient may be sent for treatment not only to the United Kingdom as is the case under G.O.III/5.1(2) but also to Greece and Turkey and although I have no evidence regarding the progress, generally, of the medical science in the two latter countries, at least in this particular case I have it that the operation which the Applicant was in need of could not be performed in Greece and that patients from Greece who are in need of such operations have to be sent either to the United Kingdom or to the United States of America. So, bearing in mind that the choice of the country for the patient's treatment does not lie with him, it may be said, in this particular case, as well as in all cases where the treatment required is an operation for the replacement of a heart valve, that this, also, is a change of the terms and conditions of service to the public officers' disadvantage.

In the light of the above I find that the Sponsored Patients Regulations of the 9th December, 1960, at least to the extent that they restrict the right of public officers to free medical treatment contravene the provisions of Article 192 of the Constitution and to that extent they are *null* and *void*.

On the other hand it is quite clear that the meeting which took place on the 28th March, 1966, and the decision reached at the meeting was as a result of the provisions of regulation 1 of these Regulations. It is equally clear that the Applicant was not sent to the United Kingdom, after he returned from Greece where the necessary operation could not be performed, as a result of that decision (see *exhibit* 5) and for this same

reason the responsible Minister decided, after Applicant's return from the United States of America, that he could not support his application that the money expended by him in connection with his operation should be refunded to him by Government.

Paragraph 3 of the submission to the Council of Ministers (*exhibit 17*) reads as follows:

«3. Καίτοι ή περίπτωσης του κ. Παπαδοπούλου δύναται να χαρακτηρισθῆ ως Ιδιάζουσα περίπτωσης διά τήν όποίαν συνυπάρχουν 'έξαιρετικοί λόγοι' έντός του πνεύματος τῆς ύπ' άρ. 5400 άποφάσεως του 'Υπουργικού Συμβουλίου τῆς 17ης Φεβρουαρίου, 1966, διά τους όποίους τό 'Υπουργικόν Συμβούλιον δύναται να άποφασίση τήν έκ τών ύστέρων καταβολήν μέρους τών έξόδων τών σχετιζομένων μέ τήν θεραπείαν του κατά χάριν (*ex-gratia*) έν τούτοις τό 'Υπουργείον 'Υγείας φρονεί ότι δέν είναι δυνατόν ή αίτησις του να ύποστηριχθῆ λόγω τῆς είλημμένης άποφάσεως όπως γενικώς μήν έγκρίνεται ή άποστολή άσθενών εις τό έξωτερικόν διά τοιαύτας έγχειρήσεις. 'Εν όψει τῆς φύσεως τῆς περιπτώσεως, και παρά τό γεγονός ότι ό 'Υπουργός 'Υγείας είναι έξουσιοδοτημένος όπως άπορριπτή παρομοίας αίτήσεις άνευ αναφοράς εις τό 'Υπουργικόν Συμβούλιον, ό 'Υπουργός 'Υγείας έπιθυμεί να έχει επικύρωσιν τῆς άπορριπτικῆς του άποφάσεως έκ μέρους του 'Υπουργικού Συμβουλίου».

It should be noted here that it has been denied on behalf of the Applicant that his application was for an *ex-gratia* payment and, as a matter of fact, nowhere in the documents produced to the court does it appear that it was so.

By its decision No. 6645 of the 18th May, 1967 (*exhibit 16*) the Council of Ministers "in the circumstances set out in the submission", confirmed the decision of the Minister of Health for the dismissal of Applicant's application.

The position then, in short, is that the Council refused Applicant's application for the refund of the money expended by him in connection with his heart operation not for any other reason but in view of the decision of the 28th March, 1966 that "patients in need of valve replacement operations should not be sponsored abroad for such operations".

As I have already stated, this decision was based on regulations which, in my view, contravene the provisions of Article 192 of the Constitution in that they alter terms and conditions of service applicable to persons in the public

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service prior to the coming into operation of the Constitution to their disadvantage. But at the same time it is quite clear that neither under G.O. III/5.1(2) nor under the Sponsored Patients Regulations was a public officer entitled to free medical treatment in the United States of America; and I cannot accept the view advanced by learned counsel for the Applicant that this being a case in which the health of the Applicant was involved he could go to any part of the world for treatment. In my view the Applicant was only entitled to those terms and conditions of service as were applicable to him before the date of the coming into operation of the Constitution and to no more. The question then that falls for consideration is how the fact that there is legal support for the decision of the Council of Ministers affects the issue even though they disregarded this and based their decision on a legally wrong reasoning.

According to Kyriakopoulos on Greek Administrative Law vol. B at p. 387, wrong legal reasoning does not lead to annulment if the decision can have other legal support. To the same effect are also the Decisions of the Council of State 666/1936 reported in vol. A.II of 1936 at p. 618, 1606/1950 reported in vol. B of 1950 at p. 128 and 1850/1950 reported in vol. B of 1950 at p. 321.

In the light of the above I am of the view that the fact that the Applicant was not entitled either before or after Cyprus became a Republic to have this operation at Government expense in the United States of America is sufficient reason why the decision complained of should not be annulled. But having come to this conclusion I wish to add, in all fairness to the Applicant, that I am of the opinion that he was entitled to be sponsored to the United Kingdom for his operation, which admittedly could not have been performed in Cyprus, and Government's decision to the contrary (see *exhibit 5*) which the Applicant never challenged, quite probably due to his anxiety to proceed abroad as soon as he could in order to have the operation which might save his life, was both wrong and unwarranted; and an offer of some help to this Applicant towards his expenses by way of an *ex-gratia* grant will not only be a generous gesture but will at the same time go a long way in doing justice to him.

In the result this recourse fails and is hereby dismissed.
In all the circumstances there will be no order as to costs.

Recourse dismissed; no order as to costs.