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[TRIANTAFYLIDIS, J.]

LOIZOS PHILIPPOU
SEPOS
v.
PRESIDENTIAL
ELECTION
RETURNING
OFFICER

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

LOIZOS PHILIPPOU SEPOS,

Applicant,

and

THE PRESIDENTIAL ELECTION RETURNING
OFFICER,

Respondent.

(Case No. 52/68).

*Elections—Presidential Elections—Candidates—Applicant's nomination papers as candidate for the Presidential Election of the 25th February, 1968, declared invalid by the Respondent Returning Officer—Recourse against that decision—Coupled with an application, under rule 13 of the Supreme Constitutional Court Rules, 1962, for a Provisional Order postponing the said election until final determination of the recourse—No competence of the Court to grant such Provisional Order—Articles 40, 145 and 146 of the Constitution—Article 145 provides for a post-election remedy i.e. an election petition and not for a pre-election remedy such as the one involved in the present proceedings—Article 146 of the Constitution is not applicable, either to this case—Because the subject-matter of the instant recourse is intrinsically connected with the validity of an election as such—And it cannot be separated therefrom and be brought under the general competence provided by Article 146—Once for the issue of the validity of an election there exists the specific and exclusive competence under Article 145 of the Constitution—It follows that the Court has no competence to grant the Provisional Order applied for—Since the subject-matter of the present recourse is not within the ambit of the jurisdiction under Article 146 of the Constitution—The Court would have still refused the Provisional Order even if it had competence to deal with the matter under such Article (see *infra* under Provisional Order).*

Presidential Elections—Nomination papers as a candidate for the forthcoming Presidential Election to be held on the 25th February, 1968, declared invalid by the Respondent Returning

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Officer—Recourse—Application for a Provisional Order postponing the said election—No competence to grant such order—Constitution, Articles 40, 145 and 146—The Elections (President and Vice-President of the Republic) Law, 1959 (Law No. 37 of 1959) sections 10, 13 (4), 16 and 40 (as amended)—The Elections (President and Vice-President of the Republic) (Amendment) Law, 1959 (Law No 41 of 1959)—The Elections (President and Vice-President of the Republic) (Supplementary Provisions) Law, 1959 (Law No. 42 of 1959), section 15(e)—The Electoral (Temporary Provisions) Law, 1963 (Law No. 71 of 1963), section 4—Cfr: The Electoral (Transitional Provisions) Law, 1965 (Law No. 39 of 1965)—See, also, above and herebelow.

Costs—In view of the novelty of the matter no order as to costs against the unsuccessful Applicant was given.

Recourse under Article 146 of the Constitution—Elections—Presidential Election—It is outside the ambit of the jurisdiction of the Court under Article 146 to deal with matters intrinsically connected with the validity of an election as such—Once there exists for such purpose a specific post-election remedy under the specific and exclusive competence of the Court by virtue of Article 145 of the Constitution—See, also above.

Administrative and Constitutional Law—Competence of the Court under Article 146 of the Constitution—No competence thereunder to deal by way of a pre-election remedy with matters intrinsically connected with the validity of an election—Once for such an issue there is the specific exclusive competence of the Court under Article 145 by way of a post-election remedy i.e. by way of an election petition—See, also, above.

Provisional Order—Rule 13 of the Supreme Constitutional Court Rules 1962—Refused—Competence—Grounds upon which the Provisional Order would still have to be refused on the merits even if the Court had competence in the matter—Weakness of the case—No irreparable harm—Serious administrative difficulties to be avoided in the public interest—See, also, above.

The complaint of the Applicant in this recourse is that the Respondent Returning Officer has wrongfully declared invalid his nomination papers, as a candidate for the Presidential Election due to take place on February 25, 1968.

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The Applicant now seeks a Provisional Order postponing such election.

Article 145 of the Constitution reads as follows:

“The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on any election petition, made under the provisions of the Electoral Law, with regard to the elections of the President or the Vice-President of the Republic or of members of the House of Representatives or of any Communal Chamber”.

On the other hand paragraph 1 of Article 146 of the constitution provides:-

“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”.

It should be noted that, in relation to the exercise of the jurisdiction under Article 146 of the Constitution, the Court is empowered to make, in a proper case, a Provisional Order as provided for under rule 13 of the Supreme Constitutional Court Rules, 1962.

In refusing the Provisional Order applied for, the Court:-

Held, (1). The recourse, on the face of it, appears to have been based on Article 40 of the Constitution. This Article lays down the constitutional requirements governing candidatures for election as President of the Republic, but it does not, itself, confer any competence on this Court to deal with any issue concerning such requirements.

(2)(a) The judicial competence regarding election petitions is provided for in Article 145 of the Constitution (*supra*). This Article cannot be treated as enabling this Court to deal with the present application for a Provisional Order, as the election concerned has not been held yet and an election petition is a remedy which can be resorted to only after the holding of an election.

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(b) Furthermore, under section 15(e) of the Elections (President and Vice-President of the Republic) (Supplementary Provisions) Law, 1959 (Law No. 42 of 1959), which is still in force by virtue of section 40 of the Elections (President and Vice-President of the Republic) Law, 1959 (Law No. 37/59) as amended by the Elections (President and Vice-President of the Republic) (Amendment) Law, 1959 (Law No. 41 of 1959)—an election may be declared to be void, on an election petition on the ground that a declaration of the invalidity of any nomination papers should not have been made.

(c) It, thus, appears that the Electoral Law in force provides a specific remedy—which by its very nature is within Article 145 of the Constitution (*supra*)—against a declaration of invalidity of nomination papers, such as the one complained of by the Applicant in the present recourse; and such remedy can only be exercised after the holding of the relevant election.

(3)(a) There remains to examine the question whether or not, in addition to such post-election remedy, there is available, also, a pre-election remedy under Article 146 of the Constitution (*supra*).

(b) Article 146 vests in the Court a general revisional jurisdiction in connection with administrative or executive acts, decisions or omissions; in relation to the exercise of such jurisdiction it is possible to make, in a proper case, a Provisional Order as provided for under the Supreme Constitutional Court Rules, 1962, rule 13.

(c) I have, therefore, to decide in the first place, whether or not the subject-matter of the recourse of the Applicant is within the ambit of Article 146 (*supra*); because, unless this is so, no question could arise of a Provisional Order being made at all in these proceedings.

(d) I am of the view that the matter of the validity of nomination papers is intrinsically connected with the validity of an election as such, and it cannot be separated therefrom and be brought under a general competence—such as that by virtue of Article 146—once for the validity of an election there exists a specific competence—that by virtue of Article 145 of the Constitution (*supra*).

(See in this respect the decision of the French Council

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of State given in the case of *Eigner* on the 4th June, 1954).

(e) Once, therefore, the subject—matter of the recourse is not within the ambit of the jurisdiction under Article 146 I have no competence to grant the Provisional Order applied for.

(4) Even if, however, I had competence to deal with the matter under Article 146, I would still have refused the Provisional Order, in the circumstances of this case for the following reasons:

(a) First, on the facts alleged by the Applicant himself, it appears that his nomination papers were not in order, in accordance with section 10 of Law No. 37/59 (*supra*) because one of his seconders was not included in the Register of the electors.

(b) Secondly, no irreparable harm will be done to the Applicant if it were to be found eventually, that his nomination papers were wrongly declared invalid, because he has a remedy by way of an election petition.

(c) Thirdly, this is a case in which the public interest requires that a Provisional Order should not be granted in view of the extensive administrative difficulties which would follow, if the election, which is fixed within two days time, were to be postponed until the conclusion of these proceedings: In view of the novelty of the matter there will be no order as to costs.

Application dismissed.
No order as to costs.

Cases referred to:

Decision of the French Council of State given in the case *Eigner* on the 4th June 1954.

Application.

Application for a provisional order postponing the Presidential election which was due to take place on the 25th February, 1968 pending the determination of a recourse against the decision of the Respondent declaring Applicant's nomination papers invalid.

Applicant in person.

K. Talarides, Counsel of the Republic, for the Respondent.

The following Decision was delivered by:-

TRIANTAFYLIDIS, J.: The Applicant in this case, who appears in person without the assistance of counsel, seeks, at this stage, a Provisional Order postponing the Presidential Election which is due to take place next Sunday, the 25th February, 1968.

The complaint of the Applicant in this recourse is that the Respondent Returning Officer has wrongfully declared invalid his nomination papers, as a candidate for such election.

Today the Court is only concerned with the application for a Provisional Order, and not with the merits of the said complaint of the Applicant.

The recourse, on the face of it, appears to have been based on Article 40 of the Constitution. This Article lays down the constitutional requirements governing candidatures for election as President of the Republic, but it does not, itself, confer on this Court competence to deal with any issue concerning such requirements.

The judicial competence regarding election petitions is provided for in Article 145 of the Constitution which reads as follows:-

“The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on any election petition, made under the provisions of the Electoral Law, with regard to the elections of the President or the Vice-President of the Republic or of members of the House of Representatives or of any Communal Chamber”.

Such Article cannot be treated as enabling this Court to deal with the present application for a Provisional Order, as the election concerned has not been held yet and an election petition is a remedy which can be resorted to only after the holding of an election.

There remains Article 146 of the Constitution which vests in the Court a general revisional jurisdiction in connection with administrative or executive acts, decisions or omissions; in relation to the exercise of such jurisdiction it is possible to make, in a proper case, a Provisional Order, as provided

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for under rule 13 of the Supreme Constitutional Court Rules, 1962.

I have, therefore, to decide, in the first place, whether or not the subject-matter of the recourse of the Applicant is within the ambit of Article 146; because, unless this is so, no question could arise of a Provisional Order being made at all in these proceedings.

In this connection it is useful to consider the exact legislative context in which the subject-matter of this recourse has arisen:

The Electoral Law in force today is The Electoral (Temporary Provisions) Law, 1963 (Law 71/63); there has been enacted later The Electoral (Transitional Provisions) Law, 1965 (Law 39/65), but nothing in the present proceedings seems to depend on any of the provisions of such later Law.

By means of section 4 of Law 71/63, there have been continued in force the provisions of The Elections (President and Vice-President of the Republic) Law, 1959 (Law 37/59) — see particularly sections 10 to 16 thereof.

Under section 13(4) of Law 37/59 it is provided that the decision of the Returning Officer declaring invalid any nomination papers may be reversed on an election petition questioning the election. Furthermore, under section 15(e) of The Elections (President and Vice-President of the Republic) (Supplementary Provisions) Law, 1959 (Law 42/59) — which is still in force by virtue of section 40 of Law 37/59, as amended by The Elections (President and Vice-President of the Republic) (Amendment) Law, 1959, (Law 41/59) — an election may be declared to be void, on an election petition, on the ground that a declaration of the invalidity of any nomination papers should not have been made.

It appears, thus, that the Electoral Law in force provides a specific remedy — which by its very nature is within Article 145 — against a declaration of invalidity of nomination papers, such as the one complained of by the Applicant in the present recourse; and such remedy can only be exercised after the holding of the relevant election.

There remains to examine the question whether or not, in addition to such a post-election remedy, there is available, also, a pre-election remedy, under Article 146:

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I am of the view that the matter of the validity of nomination of papers is intrinsically connected with the validity of an election as such, and it cannot be separated therefrom and be brought under a general competence — such as that by virtue of Article 146 — once for the validity of an election there exists a specific competence — that by virtue of Article 145. (See in this respect the Decision of the French Council of State given in the case of *Eigner* on the 4th June, 1954).

Once, therefore, the subject-matter of the recourse is not within the ambit of the jurisdiction under Article 146 I have no competence to grant the Provisional Order applied for.

Even if, however, I had competence to deal with the matter under Article 146, I would still have refused a Provisional Order, in the circumstances of this case, for the following reasons:

First, on the basis of the facts alleged by the Applicant himself, it appears that his nomination papers were not in order, in accordance with section 10 of Law 37/59, because one of his seconders was not included in the relevant Register of electors.

Secondly, no irreparable harm will be done to the Applicant if it were to be found, eventually, that his nomination papers were wrongly declared invalid, because he has a remedy by way of an election petition, as pointed out, earlier on, in this Decision.

Thirdly, this is a case in which the public interest requires that a Provisional Order should not be granted, in view of the extensive administrative difficulties which would follow, if the election, which is fixed within two days' time, were to be postponed until the conclusion of these proceedings.

For all these reasons the application of the Applicant for the Provisional Order stands dismissed; in view of the novelty of the matter there should be no order as to costs.

Application dismissed.
No order as to costs.