

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS REVISIONAL JURISDICTION AND IN
ITS REVISIONAL APPELLATE JURISDICTION

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS POUAGARE,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,
2. THE COMMITTEE OF MANAGEMENT OF
THE RELIEF FUND,

Respondents.

(Case No. 268/69).

Relief Fund (Persons who Suffered Damage) Law, 1967 (Law No. 2 of 1968) and Regulations made thereunder (published in the Third Supplement of the Official Gazette of April 12, 1968)—Rejection by the Respondent Committee of the Applicant's application for relief in the way of a loan—Sole reason given for that refusal being that Applicant's wife owns property which could be mortgaged for the raising of a loan—Reason given misconceived in Law—And vitiating the sub judice decision which, therefore, has to be annulled as being contrary to law and in excess of powers.

Reasoning of administrative decisions—Reason given misconceived in law—See supra.

Administrative decision contrary to law and in excess of powers—See supra; see also infra.

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Collective organ—Meeting on two occasions, with a different composition, to decide on an application for relief under Law No. 2 of 1968 (supra)—Basic principles governing functioning of collective organs, thus, contravened—See Vivardi and The Vine Products Council (1969) 3 C.L.R. 486—Sub judice decision, therefore, has to be annulled for this reason too.

Administrative law—Collective organ—Basic principles governing functioning of collective organs—See supra.

Husband and Wife—They are two separate legal entities—Property of wife is not the property of husband—Husband cannot lawfully mortgage his wife's property to raise a loan—Nor can he force her to mortgage her properties in order to meet his financial needs.

In this case the Applicant was refused a loan, by way of relief, under the provisions of the Relief Fund (Persons who Suffered Damage) Law, 1967 (Law No. 2 of 1968) and the Regulations made thereunder (which were published in the third Supplement of the Official Gazette on April 12, 1968). The Respondent Committee decided to reject Applicant's application for such loan on the ground that his wife owns immovable property which could be mortgaged for the purpose of raising a loan. This reasoning was held to amount to a misdirection vitiating the said refusal. There is a further reason for which the refusal in question cannot be allowed to stand: it is the defective composition of the Respondent Committee at the material time (*infra*).

Annuling the *sub judice* decision not to grant to the Applicant the loan referred to above, the Court:—

Held, I: As to the validity of the sole reason given for refusing the loan in question (supra):

(1) It is correct that, to a certain extent, the Respondent Committee may have to take into account certain of the financial means of the spouse of an Applicant for relief, such as the income of the spouse.

(2) But, though the income of a spouse may be a relevant consideration, I cannot see how in the particular circumstances of this case, the property of the wife of an Applicant could be treated, not only as relevant but, in fact, as it has been done in the present case, as the sole decisive consideration.

(3) In the eye of the legal system of Cyprus a husband and a wife are separate legal entities; and it is not lawfully possible for a husband to mortgage the property of his wife in order to raise a loan; nor can he force her to do that.

(4) In the circumstances I have no hesitation in holding that the *sub judice* decision is contrary to law and in excess of powers.

Held, II: As to the further point regarding the defective composition of the Respondent committee at the material time:

(1) The members of the Committee who considered the case of the Applicant on July 20, 1968 and reserved then their decision thereon, were not all of them the same as those who, eventually, dismissed his application on December 12, 1968; on the latter date there was present a member who was absent on the former date, and he was so present in the place of another member who was present on the former date but absent on the latter one.

(2) Consequently, basic principles governing the functioning of collective organs have been contravened and as a result the *sub judice* decision has for this reason too, to be annulled. (Note: Those basic principles have been referred to in the recent case *Vivardi and The Vine Products Council* (1969) 3 C.L.R. 486).

Sub judice decision annulled.

Note: The Respondent Committee having acted in the matter in all good faith, the Court awarded the Applicant only part of his costs.

Cases referred to:

Vivardi and The Vine Products Council (1969) 3 C.L.R. 486.

Recourse.

Recourse against the decision of the Respondents not to grant to Applicant a loan, by way of relief, under the Relief Fund (Persons who suffered Damage) Law, 1967 (Law 2/68) and the Regulations made thereunder.

M. Christophides, for the Applicant.

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

Cur. adv. vult.

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The following judgment was delivered by:

TRIANTAFYLLIDES, J.: In this case the Applicant complains against the refusal of Respondent 2 to grant him a loan, by way of relief, by virtue of the provisions of the Relief Fund (Persons who Suffered Damage) Law, 1967, (Law 2/68), and the Regulations made thereunder (which were published in the 3rd Supplement to the official Gazette on the 12th April, 1968).

The Applicant applied for relief, on the appropriate form (see *exhibits 4 and 4A*) on the 6th May, 1968; the relief he was asking for was a loan of £1,000.—for the purpose of meeting certain liabilities of his as a shopkeeper.

Respondent 2, being a Committee set up under the aforesaid legislation, dealt with his case on the 20th July, the 9th December, and the 12th December, 1968.

It had before it the formal application of the Applicant, a report made by the Nicosia District Officer's Office, dated the 10th August, 1968 (*exhibit 5*), and information given by the Applicant orally; the Applicant was interviewed for the purpose by the Chairman of the Committee on the 9th December, 1968 (see *exhibit 2*).

On the 12th December, 1968, the Committee decided to reject the application of the Applicant on the ground that his wife owns immovable property which could be mortgaged for the purpose of raising a loan (see again *exhibit 2*); the decision of the Committee was communicated to the Applicant by means of a letter dated the 7th July, 1969 (*exhibit 1A*).

It has not been found by the Committee—as it appears at any rate on the basis of the material before me—that the Applicant is not a person who would not otherwise come within the ambit of the relevant legislation. So all I have to examine is the validity of the sole reason for which the loan requested by the Applicant was refused:

It is correct that, to a certain extent, the Respondent may have to take into account certain of the financial means of the spouse of an Applicant, such as the income of the spouse; actually by means of the appropriate forms, prescribed for various applications for relief, information is sought from Applicants *about the income, but not, also, the property*—and

this differentiation is quite significant—of their respective spouses.

Though the income of a spouse may be a relevant consideration, I cannot see how, especially in the particular circumstances of a case such as the present one, the property of the wife of an Applicant could be treated, not only as relevant but, in fact, as it has been done in this case, as the sole decisive consideration.

There is no doubt that in the eye of the legal system of Cyprus a husband and a wife are separate legal entities; and it is not lawfully possible for a husband to mortgage the property of his wife in order to raise a loan; nor can he lawfully force her to mortgage her property in order to meet his financial needs.

A wife may or may not, as she wishes, mortgage her property in order to assist her husband financially; and had in the present case the Applicant's wife already mortgaged her property and raised a loan for his benefit, then it might, possibly, have been found by the Committee, Respondent 2, that no further loan to the Applicant was needed by him, at the material time, by way of relief; but, with respect, I cannot agree with the Committee that it was reasonably open to it to say that the Applicant *could* have mortgaged the property of his wife and, therefore, on this sole ground, his application for relief had to be turned down. If that were so it would amount to shifting a responsibility undertaken by Government, under the relevant legislation, on to the shoulders of a private person, the Applicant's wife; and I do not think that this was ever within the intention of our legislators when the legislation in question was enacted.

In the circumstances I have no hesitation in holding that the *sub judice* decision is contrary to law and in excess of powers.

There is a further reason for which such decision cannot be allowed to stand as being a valid one: The members of the Committee who considered the case of the Applicant on the 20th July, 1968 (see *exhibit* 3), and reserved then their decision thereon, were not all of them the same as those who, eventually, dismissed his application on the 12th December, 1968 (see *exhibit* 2); on the latter date there was present a member who was absent on the former date, and he was so

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present in the place of another member who was present on the former date and absent on the latter one.

In the circumstances, basic principles which govern the functioning of collective organs—and which have been referred to in the earlier case of *Vivardi and The Vine Products Council* (1969) 3 C.L.R. 486—have been contravened and as a result the *sub judice* decision has for this reason, too, to be annulled.

It is, therefore, declared to be *null* and *void* and of no effect whatsoever. It is up to the Committee, now, to examine again the application of the Applicant and decide on it afresh.

Regarding costs, I have no doubt that the Committee has acted in this matter in all good faith and in an effort to do justice as it thought best. On the other hand, if I were to deprive the Applicant completely of his costs on this ground I would be somehow burdening with all his costs a person who appears to be in need of relief. I will, therefore, make an order for £15.--, towards his costs, in his favour.

Sub judice decision annulled.
Order for costs as above.