

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

“KOSMOS LTD.” PRESS OF NICOSIA,
Applicants,
and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF THE PUBLIC
INFORMATION OFFICE,

Respondents.

“KOSMOS LTD.”
PRESS OF
NICOSIA
v.
REPUBLIC
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OF INTERIOR
AND ANOTHER)

(Case No. 43/71).

Press—Press Law, Cap. 79—Article 19 of the Constitution—Newspaper—No previous licence or permit to publish required—Declaration under section 3 and receipt under section 4 of the Law—Meaning and legal effect of said machinery—It amounts to “registration” with a view to facilitating the easy discovery of who is responsible for the newspaper as well as for the collection of any penalty against him (the publisher) upon any conviction for printing or publishing it as provided by section 3(1)(b) of the said same Law—See further, infra.

Press Law, Cap. 79—Sections 3 and 4 (supra)—Receipt under section 4 granted to the Interested Party who had applied three years earlier by means of an utterly incomplete application and after being then reminded by the Respondent Minister, as well as three years later on, to comply with the requirements of section 3—Minister vested with only limited discretion under section 4 of the Law, that is to check if the title of the newspaper sought to be registered is so resembling an already registered one as to be likely to cause confusion—Cf. section 11 of the said Law—In the instant case, however, it is not claimed that the non issue of a receipt under section 4 to the applicants was for that purpose—Nor can it be said that section 4 authorised the Minister of Interior to inquire with the Interested Party, as he did three years later, if the latter intended to comply with section 4 in respect of the title “Eleftheros” involved in this case—And, surely, the Interested Party had no vested right in that title by merely filing an incomplete application and leaving it at that—See further infra ; cf. supra.

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Statutes—Construction of—Press Law, Cap. 79—Section 4—To be strictly construed in view of the fact that said section is a provision likely to transgress into the province of the right of the freedom of the press.

Press—Freedom of—Constitutionally safeguarded—Article 19 of the Constitution—No previous licence or permit to publish a newspaper required under our Press Law, Cap. 79—If such a licence was required, such a provision would have been repugnant to the Constitution.

Constitutional Law—Press—Freedom of—Article 19 of the Constitution—Previous licence to publish a newspaper inconsistent with the provisions of Article 19—See further supra.

The applicants by this recourse seek to challenge the decision of the respondents to grant a 'permit' to the interested party, Mr. M.E., to publish a newspaper with the title "Eleftheros" instead of the applicants. The ground of law relied upon by the applicants is that "the act or decision of the respondents was reached in violation of the law, and in particular of sections 3 and 4 of the Press Law, Cap. 79". The Court held that the recourse was well founded and annulled, accordingly, the decision complained of.

Sections 3 and 4 of the Press Law, Cap. 79, so far as relevant read as follows :

" 3. (1) Subject to the provisions of subsections (2) and (3) hereof, no person shall print or publish or cause to be printed or published any newspaper in the Colony, unless he first furnishes the Administrative Secretary with |

- (a) a declaration on oath to be made and subscribed before a Judge in the form contained in the First Schedule to this Law, setting forth the particulars therein set out, made and signed by the person named therein as proprietor of the newspaper to which it relates ; and
- (b) a bond in the sum of five hundred pounds executed before and certified by a certifying officer appointed under the Certifying Officers Law or any Law amending or substituted for the same, signed by the person named in the statutory declaration as the proprietor and secured to the satisfaction of the Administrative Secretary either by a surety or sureties or by mortgage or deposit of money or

other securities as the Administrative Secretary may, in any case, direct, conditioned that the proprietor shall pay to the Republic every penalty which may be imposed upon, or adjudged against, him upon any conviction for printing or publishing or publishing or causing to be printed or published any seditious or other libel at any time after the execution of the bond and also any damages or compensation and costs on any judgment for the plaintiff in any action for libel against the proprietor and all other penalties whatsoever which may be imposed upon, or adjudged against, him under the provisions of this Law, and obtains a receipt as in section 4 of this Law provided—

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4. Upon receiving a declaration and a bond, as in section 3 of this Law provided, the Administrative Secretary shall file or cause the same to be filed in his office and shall, thereupon, give or cause to be given to the proprietor of the newspaper, in respect of which the declaration and bond were furnished, a receipt bearing the date on which such declaration and bond were furnished, and such receipt shall be admissible in all proceedings as evidence of all that is stated therein relating to such declaration and bond".

The salient facts of the case are briefly as follows :

On the 23rd January, 1971, the applicants delivered to the appropriate officer all documents required by and in compliance with section 3 of the aforesaid Law, for the issue to them of a receipt under section 4 of the same Law, for the printing or publishing of a newspaper with the title " Eleftheros ". A search was made at the Ministry of Interior where all relevant files are kept and it was found that the interested party had filed certain documents in March, 1968, for the purpose of the issue to him of a receipt for the publication of a newspaper also with the title " Eleftheros ". But these documents did not fully comply with the requirements of section 3 of the Law. The interested party was duly informed about these deficiencies by letter dated March 5, 1968 and called upon to comply with the formalities required under section 3. There was no reply and no compliance with the said letter ever since.

In spite of this, the Minister of Interior, personally, thought fit, before proceeding to issue the statutory receipt to the applicants, to remind the interested party of the contents of the aforesaid letter dated March 5, 1968 and inform him that "unless he complied within 8 days with the required formalities of the law, his application would be dismissed and a permit for the publication of a newspaper with the title Eleftheros would be given to another applicant who had fully complied with the law". Upon receipt of this letter the interested party complied fully with the requirements of section 3 by filing a new declaration and a bond dated January 28, 1971. They were received on February 1, 1971, and the Minister of Interior issued the relevant receipt under section 4 of the Law to the interested party.

On the same date the applicants were informed that it had been ascertained that there was prior application in which the interested party wished to have the receipt for the publication of a newspaper with the title "Eleftheros" issued to them, and concluded by saying :—"In accordance with the advice of the Attorney-General we are prevented from granting a permit for the publication of a newspaper with the same title so long as there is a previous application pending".

Annuling the decision complained of, the Court :—

Held, (1)(a). On the face of section 4 (*supra*) and by the use of the word "shall" one might easily arrive at the conclusion that the Minister has no discretion in the matter and is bound to issue forthwith the receipt provided thereby upon compliance by an applicant with the requirements of section 3 (*supra*). But on more than one occasion the word "shall" in a statutory provision has been interpreted as meaning "may". In view of this, section 4 and its prerequisite, section 3, have to be examined in the light of Article 19 of the Constitution, whereby the freedom of expression which includes the freedom of the press, is duly safeguarded.

(b) Counsel on both sides are in agreement that no previous licence for the issue of a newspaper is required under our present Press Law. Such a permit was indeed required before 1947. If a licence was required, such a provision would have been unconstitutional. This view is fully endorsed by this Court as being consonant with authority. As said by Lord Mansfield, C.J. in *R. v. Dean of St. Asaph* [1784] 3 T.R. 428,

at p. 431 : "The liberty of the press consists in printing without any previous licence subject to the consequences of the Law". In countries where the freedom of the press is constitutionally guaranteed, the previous licence for the publication of a newspaper is unconstitutional. As it was said by Hughes C.J. in the case of *Lovell v. Griffin*, 303 U.S. 444-453 "the struggle for the freedom of the press was primarily directed against the power of the licensor".

(2) Some legislators, however, and ours is one of them, have accepted the previous declaration (which is not a preventive measure but a measure for the exercise of supervision on the press and facilitating the ascertainment of those responsible for criminal and civil liability) as not being repugnant to the Constitution. The Constitutional Court of Italy by its decision 31/1957 found the requirement of the relevant Italian law for registration with the Court Registry before publication of a newspaper as not being contrary to Article 21 of the Italian Constitution, as the judicial authority, with which the declaration is filed, had no discretionary power and was bound to accept and record same in the appropriate register, entitled only to ascertain, before registration, if there was compliance with the requirements of the law.

(3) With the meticulous care the legal draftsmen of sections 3 and 4 of our Press Law (*supra*) avoided the words "licence", "permit" or "registration" in order to describe the nature of the two sections. The only view, however, to my mind, that can be taken of same is that they amount to "registration" with a view to facilitating the easy discovery of who is responsible as well as for the collection of "every penalty which may be imposed upon and adjudged against him (the publisher) upon any conviction for printing or publishing" as provided by section 3(1)(b) of the Press Law, Cap. 79.

(4) In the light of the above, the construction to be given to section 4 should be a strict one, in fact as strict, if not more, as that given to Taxing and Penal Laws, in view of the fact that the said section is a provision likely to transgress into the province of the fundamentally safeguarded right of the freedom of the press.

(5) I will not go that far as to say that the Minister of the Interior is not possessed of any discretionary power whatsoever under section 4 of the Law (*supra*). In my opinion he is possessed with a limited one and that is to check if the title

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sought to be registered is so resembling an already registered one as to be likely to cause confusion. This limited discretion can be inferred from the provisions of section 11 of the said Law which recognizes that "upon compliance with the requirements of sections 3 and 4 of the Law, the title of the newspaper in respect of which the statutory declaration and bond have been furnished and filed, shall be deemed to be the property of the proprietor and no person other than the proprietor shall be entitled to use such title or any title so resembling it, as to be likely to cause confusion".

(6) In the present case, however, it is not claimed that the non issue of a receipt to the applicants was for that purpose. Nor can it be said that section 4 (*supra*) authorized the Minister to inquire with the interested party, as he did three years later, if the latter intended to comply with section 3 of the Law, in respect of the title "Eleftheros". The interested party has no vested right in that name by merely filing an incomplete application and leaving it at that.

(7) In the circumstances, the Minister of Interior acted in violation of the Law in not issuing the receipt to the applicants and, therefore, the *sub judice* decision is annulled. Respondent 1 to pay £15.—towards applicants' costs.

Sub judice decision annulled.
Order for costs as above.

Cases referred to :

R. v. Dean of St. Asaph [1784] 3 T.R. 428, at p. 431, per Lord Mansfield, C.J. ;

Lovell v. Griffin, 303 U.S. 444-453, per Hughes, C.J. ;

Decision of the Italian Constitutional Court No. 31/1957.

Recourse.

Recourse against the decision of the respondents to grant a 'permit' to the Interested Party to publish a newspaper with the title "Eleftheros" instead of the applicant.

N. Charalambous, for the applicant.

K. Talarides, Senior Counsel of the Republic, for the respondents.

G. Pelaghias, for the Interested Party.

Cur. adv. vult.

The following judgment was delivered by:—

A. LOIZOU, J. : The applicants, a company limited, by their present recourse apply for “ a declaration that the act and or decision of the respondents to grant a ‘ permit ’ to the interested party, Mr. Michalakis HjiEfthymiou, to publish a newspaper with the title ‘ Efeftheros ’ instead of the applicants is null and void and of no effect.”

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Of the three grounds of law originally relied upon by the applicants two were withdrawn and the one upon which it is now based is that “ the act and or decision of the respondents was reached in violation of the law, and in particular, of sections 3 and 4 of the Press Law, Cap. 79.” The salient facts of the case are as follows :—

On the 23rd January, 1971, the applicants delivered to the appropriate officer of the Public Information Office all documents required by and in due compliance with section 3 of the aforesaid law, for the issue to them of a receipt under section 4 of the law, for the printing or publishing of a newspaper with the title ‘ Eleftheros ’. The said receipt was not issued upon the filing of all documents but instead the applicants were told that, that would be done within a few days. Apparently the officer at the Public Information Office who accepted these documents had to forward same to the Ministry of the Interior, as the Minister thereof is the competent authority now in lieu of the “ Administrative Secretary ” provided under section 4. At the Ministry where all relevant files are kept, a search was made and it was found that the interested party had filed certain documents in March, 1968, for the purpose of the issue to him of a receipt for the publication of a newspaper also with the title ‘ Eleftheros ’. These documents did not fully comply with the requirements of section 3 of the law. This appears from *exhibit* 5, dated 5th March, 1968, by which the interested party had been informed by the Director of the Information Office that (a) the stamps on the declaration were short by 150 mils ; (b) 400 mils stamp was required on the bond No. 2 and the signature thereon had to be certified by a Certifying Officer ; and (c) that the aforesaid documents had to be accompanied by a Bank guarantee for the the sum of £500 valid for an unlimited duration as the bond. He was further asked to comply with the said formalities before “ the permit applied for could be granted ”. There was no reply and no compliance with the said letter ever since.

In spite of this, however, the Minister of the Interior, personally, thought fit, before proceeding to issue the receipt

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to the applicants, to remind the interested party of the contents of *Exhibit 5* and inform him that "unless he complied within 8 days with the required formalities of the law, his application would be dismissed and a permit for the publication of a newspaper with the title 'Eleftheros' would be given to another applicant who had fully complied with the law". Upon receipt of this letter, copy of which is *Exhibit 7*, the interested party complied fully with the requirements of section 3 by filing a new declaration and a bond, dated 28.1.1971, photo copies of which have been produced as *Exhibits 3* and 4. They were received at the Public Information Office on the 1st February, 1971, and the Minister of the Interior issued the relevant receipt under section 4 of the law, copy of which is *Exhibit 8*.

On the same date the applicants were informed by the Director of the Public Information Office, *Exhibit 1*, that with regard to the documents filed on the 23rd January, 1971, for the issue to them of a permit for the publication of a newspaper under the title 'Eleftheros', it had been ascertained that there was prior application in which the interested parties wished to have the permit for the publication of a newspaper with the title 'Eleftheros' issued to them, and concluded by saying—"In accordance with the advice of the Attorney-General we are prevented from granting a permit for the publication of a newspaper with the same title so long as there is a previous application pending".

On the 8th February, 1971, in reply to a cable of protest by the applicants the Director of the Public Information Office wrote to the applicants informing them that he was unable to issue the receipt under section 4 of the law regarding a permit for the publication of a newspaper with the title 'Eleftheros' as a receipt had already been issued to a previous applicant for the publication of a newspaper with such a title.

The point for determination is whether the Minister of the Interior has any discretion under section 4 of the law to issue the receipt provided thereby or whether he is bound to issue same forthwith upon compliance by an applicant with the requirements of section 3 of the law. Section 4 of the law reads as follows :—

"4. Upon receiving a declaration and a bond, as in section 3 of this Law provided, the Administrative Secretary shall file or cause the same to be filed in his office and shall, thereupon, give or cause to be given to the proprietor of the newspaper, in respect of which the declaration and bond were furnished,

a receipt bearing the date on which such declaration and bond were furnished, and such receipt shall be admissible in all proceedings as evidence of all that is stated therein relating to such declaration and bond."

On the face of it and by the use of the word "shall" one might easily arrive at the conclusion that the Minister has no discretion in the matter. On more than one occasion, however, the word "shall" in statutory provisions has been interpreted as meaning "may". In view of this, section 4 and its prerequisite, section 3, have to be examined in the light of Article 19 of the Constitution, whereby the freedom of expression which includes the freedom of the press, is duly safeguarded.

Counsel on both sides are in agreement that no previous licence for the issue of a newspaper is required under our present Press Law. Such a permit was indeed required before 1947. If a licence was required, such a provision would have been unconstitutional. This view is fully endorsed by this Court as being consonant with authority. As said by Lord Mansfield in *R. v. Dean of St. Asaph* [1784] 3 T.R. 428 at p. 431—"The Liberty of the press consists in printing without any previous licence subject to the consequences of the law". In countries where the freedom of the press is constitutionally guaranteed, the previous licence for the publication of a newspaper is unconstitutional. As it was said by Hughes C.J. in the case of *Lovell v. Griffin*, 303 U.S. 444-453 "the struggle for the freedom of the press was primarily directed against the power of the licensor". Some legislators, however, and ours is one of them, have accepted the previous declaration (which is not a preventive measure but a measure for the exercise of supervision on the press and facilitating the ascertainment of those responsible for criminal and civil liability) as not being repugnant to the Constitution. The Constitutional Court of Italy by its Decision 31/1957 found the requirement of the relevant Italian law for registration with the Court Registry before publication of a newspaper as not being contrary to Article 21 of the Italian Constitution, as the Judicial authority, with which the declaration is filed, had no discretionary power and was bound to accept and record same in the appropriate register, entitled only to ascertain, before registration, if there was compliance with the requirements of the law.

With meticulous care the legal draftsmen of sections 3 and 4 avoided the words "licence" "permit" or "registration" in order to describe the nature of the two sections. The only view, however, to my mind, that can be taken

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In the light of the above, the construction to be given to section 4 should be a strict one, in fact as strict, if not more, as that given to Taxing and Penal Laws, in view of the fact that the said section is a provision likely to transgress into the province of the fundamentally safeguarded right of the freedom of the press. I will not go that far as to say that the Minister of the Interior is not possessed of any discretionary power whatsoever under section 4 of the Law. In my opinion, he is possessed with a limited one and that is to check if the title sought to be registered is so resembling an already registered one as to be likely to cause confusion. This limited discretion can be inferred from the provisions of section 11 of the Law which recognizes that "upon compliance with the requirements of sections 3 and 4 of the Law, the title of the newspaper in respect of which the statutory declaration and bond have been furnished and filed, shall be deemed to be the property of the proprietor and no person other than the proprietor shall be entitled to use such title or any title so resembling it, as to be likely to cause confusion". As section 3 of the Law provides that "no person shall print and publish or cause to be printed or published any newspaper ... unless, etc." the words "to use such title" appearing in section 11 of the Law must be taken to refer to the lawful use of a title, *i.e.* the publication of a newspaper after a receipt is issued under section 4. In the present case, however, it is not claimed that the non issue of a receipt to the applicants was for that purpose. Nor can it be said that section 4 authorised the Minister to inquire with the interested party, as he did three years later, if the latter intended to comply with section 3 of the Law, in respect of the title 'Eleftheros'. The interested party had no vested right in that name by merely filing an incomplete application and leaving it at that. In the circumstances the Minister of the Interior acted in violation of the Law in not issuing the receipt to the applicants and, therefore, the *sub judice* decision is hereby annulled.

In the circumstances of this case respondent No. 1 to pay £15 towards applicants' costs.

Sub judice decision annulled. Order for costs as above.