[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHILIPPOS MICHAELIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL FOR THE REGISTRATION OF ARCHITECTS AND CIVIL ENGINEERS,

Respondent.

(Case No. 175/71).

Architects and Civil Engineers Law, 1962 (Law No. 41 of 1962)—Construction of section 7(2)(c) of the Law regarding registration of civil engineers—A person is entitled thereunder to be registered as a 'Civil Engineer' on the date he applied therefor once he is an associate member of the Institution of Civil Engineers (London) —Irrespective of whether, since the enactment of said Law in May 1962, the rules of the aforementioned Institution have changed so as to allow agricultural engineers (such as the applicant in this case) to be registered as associate member thereof—Refusal of the respondent to register the applicant - an agricultural engineer - as a 'Civil Engineer' under the said statute, annulled.

Statutes—Construction of —Principles applicable—Construction of section 7(2)(c) of the Architects and Civil Engineers Law, 1962 (Law No. 41 of 1962)—When the words of the statute are clear and unambiguous, they must be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament.

Words and Phrases—'Civil Engineer' in section 7(2)(c) of said Law No. 41 of 1961.

By this recourse made under Article 146 of the Constitution the applicant, seeks the annulment of the decision

of the respondent Council not to register him as a 'Civil Engineer' in accordance with the Architects and Civil Engineers Law, 1962, (Law No. 41 of 1962). The sole issue in this case is the proper construction and application of section 7(2)(c) of the said Law, enacted in May 1962. Section 7(2)(c) reads, so far as material :-

"(2) A person shall be entitled to be registered as Civil Engineer if he satisfies the board that he is of good character, and that

(a)

(b)

(c) he is an associate member or member of the Institution of Civil Engineers in London ....."

It is common ground that the applicant is an associate member of the said Institution of Civil Engineers in London since 1970. When in January 1971 he applied to be registered as 'Civil Engineer' under the Statute, the Board informed him that it was unable to register him as 'Civil Engineer' because his diploma was a diploma of an 'agricultural engineer' and not of a civil engineer. It would seem that long after the enactment of our Law in 1962 (*supra*) the rules of the aforementioned Institution of Civil Engineers in England have changed and now they accept as members all categories of engineers *i.e* mechanical engineers, electrical engineers, naval engineers and agricultural engineers, after they produce a certificate that they were trained also in the field of civil engineering or that they have passed an examination in a subject relating to civil engineering.

It was argued by counsel of the respondent that the refusal complained of in this case was justified because the applicant did not possess sufficient knowledge in the field of civil engineering, once the main subject of his education was agricultural engineering; it is true, counsel went on, that since the enactment of our said Law 41/1962 the Institution of Civil Engineers (London) changed its rules so that now persons may be admitted to become associate members although they do not possess the qualifications our legislature had in mind at the time of enacting our Law. He finally contended that in the light of these circumstances the Court in construing section 7 of the statute (*supra*) should have regard to the state of things existing at the time the Law

was passed in 1962, and to the evil which as appears from the statute itself was intended to be remedied *i.e.* the carrying on of the profession of civil engineer by persons not duly qualified; and Counsel relied on a passage from Halsbury's Laws of England, 3rd edn. Vol. 36, paragraph 620, p. 409.

The learned Judge of the Supreme Court felt unable to subscribe to the views advanced by counsel for the respondent; and annulling the *sub judice* decision :

Held, (1) It has been said judicially in a number of cases that the Courts are not entitled to canvass the power of the Parliament to make any statute, or the propriety or wisdom of making it; and may not base the construction of a statute on their view of what the Parliament ought to have done.

(2) The dominant purpose in construing a statute is to ascertain the intention of the legislature as so expressed. This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament.

(3) The words of our Law 41/1962, section 7 are clear and unambiguous (*supra*), and I find myself in agreement with counsel for the applicant, that those words themselves indicate what must be taken to have been the intention of Parliament; and that there is no need to look elsewhere in order to discover their intention or their meaning (see *inter alia, Vacher and Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107, at pp. 117 - 118, per Lord MacNaghten). It is appropriate to point out that our Law contains an interpretation section in which the words "civil engineer" are defined as meaning "a person who possesses the qualifications prescribed in section 7 of this Law" (*supra*).

Sub judice decision (refusal) annulled.

Cases referred to:

River Wear Commissioners v. *Adamson* [1877] 2 App. Cas 743 H.L., at p. 764;

Ormond Investment Company v. *Betts* [1928] A.C. 143, at p. 156;

Magor and St. Mellons R.D.C. v. *Newport Corporation* [1952] A.C. 189;

Vacher and Sons Ltd. v. *London Society of Compositors* [1913] A.C. 107, at pp. 113, 117-118;

Inland Revenue Commissioners v *Hinchy* [1960] A.C. 748, at p. 767;

Redford v. *The Republic (Minister of Finance)* (1970) 3 C.L.R. 409, at p. 416;

Viscountess Rhondda's Claim [1922] 2 A.C. 339, at p. 397.

Recourse.

Recourse against the refusal of the respondent to register the applicant as a Civil Engineer in accordance with sub-section 2 of section 7 of the Architects and Civil Engineers Law, 1962 (Law 41/62).

P. Demetriou, for the applicant.

L. Demetriades, for the respondent.

Cur. adv. vult

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: The sole question for decision in this case, is, in my view, the proper construction of subsection 2(c) of s. 7 of the Architects and Civil Engineers Law 1962 (No. 41/62) which came into force on May 30, 1962, and it reads as follows:-

"(2) A person shall be entitled to be registered as a Civil Engineer if he satisfies the Board that he is of good character, and that

(a) ..

(b)

(c) he is an associate member or member of the Institution of Civil Engineers in London.

(d) ".

Although it has been conceded by counsel for the respondent that the applicant is an associate members of the Institution of Civil Engineers in London since the year 1970, yet on January 26, 1971, when he applied to the Board to register him in accordance with s. 6 of our Law as a civil engineer, the Board after considering his application, informed him on March 8 that it was unable to register him as a civil engineer once his diploma was a diploma of an agricultural engineer and not of a civil engineer.

On May 7, 1971, the applicant, feeling aggrieved because of the decision of the Board, filed the present recourse claiming that the act and/or decision of the respondent not to register him in the Register of the Civil Engineers was null and void and of no effect whatsoever. The ground of law was this :- That the act and/or decision of the respondent was taken in contravention of the Architects and Civil Engineers Law 1962, and particularly of s. 7(2), and was therefore in excess and/or in abuse of their powers.

On June 12, 1971, the opposition was filed on behalf of the respondent and in paragraph 2 of the grounds of law, it is stated that "the respondents in the proper exercise of their statutory powers refused to accept the applicant for registration in view of the fact that since the enactment of paragraphs (c) and (d) of subsection 2 of s. 7 of Law 41/62, the prevailing circumstances relating to the provisions of those paragraphs changed before the filing of the applicant's application with the respondents."

On the date of hearing, *viz.*, March 9, 1972, counsel on behalf of the respondent, without objection by counsel for the applicant, applied for the adjournment of this case because he submitted that there was a possibility of amending the law regarding some of its provisions which affect the case of the applicant. Although an adjournment was granted, apparently nothing was done about the amending of the law and, counsel for the res-

pondent on October 27, 1972, argued that the decision of the Board was justified because the applicant did not possess knowledge in the field of civil engineering, once it was not the main subject of his education, and that after the enactment of our law the Institution of Civil Engineers in London changed its procedure in admitting a person to become an associate member. Counsel further argued that candidates now may be admitted to become associate members of the Institution of Civil Engineers in London, although they did not possess the qualifications our legislature had in mind at the time of enacting our law. He finally contended that in the light of these circumstances, the Court in construing s. 7 of our law, is permitted to have regard to the state of things existing at the time the Law was passed, and to the evil, which as appears from these provisions, the statute was designed to remedy, *i.e.* the registration of persons as civil engineers who were not duly qualified. He relies on a passage from Halsbury's Laws of England, 3rd edn., vol. 36, at p. 409 paragraph 620.

In support of this proposition, counsel called the Chairman of the Board for the period of 1970 - 1972, Mr. Ioannides, who told the Court that the reason why the applicant was rejected was that he did not have the qualifications required because (a) he was an agricultural engineer as opposed to a civil engineer, and that his main education and training related to the field of agricultural engineering; and (b) because in the meantime the rules of procedure of the Institution of Civil Engineers in England have changed and now accept as members all categories of engineers, *i.e.* mechanical engineers, electrical engineers, agricultural and naval engineers, after they produce a certificate that they were trained also in the field of civil engineering or that they have passed an examination in a subject relating to civil engineering.

Counsel on behalf of the applicant contended that regarding the construction where a statute is unmbiguous, if the words of the statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of Parliament, and there is no need to look elsewhere to discover their intention or their

meaning. He relies on Halsbury's Laws of England, 3rd edn., Vol. 36 at p. 388 paragraph 579.

Now it has been said judicially in a number of cases that it is the province of the legislature to enact statutes, and of the Courts to construe the statutes which the legislature has enacted. Thus the making of law is a matter for the legislature and not for the Courts. (*River Wear Commissioners* v. *Adamson* [1877] 2 App. Cas. 743 H.L. at p. 764 per Lord Blackburn; *Ormond Investment Company* v. *Betts* [1928] A.C. 143, H.L. at p. 156 per Lord Buckmaster; and also *Magor and St. Mellons R.D.C.* v. *Newport Corpn.* [1952] A.C. 189, H.L.). The Courts, therefore, are not entitled to canvass the power of Parliament to make any statute, or propriety or wisdom of making it (*Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107 H.L. per Viscount Haldane, L.C. at p. 113), and may not base the construction of a statute on their view of what the Parliament ought to have done.

Our Law contains an interpretation section in which is declared the meaning which the words "civil engineer" are to bear for the purpose of this law, unless the context otherwise requires. The words read : " 'Civil Engineer' means a person who possesses the qualifications prescribed in s. 7 of this law".

Regarding the general principles of construction, the dominant purpose in construing a statute is to ascertain the intention of the legislature (*Viscountess Rhondda's Claim* [1922] 2 A.C. 339, H.L., at p. 397), as so expressed. This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament. (Inland Revenue Commissioners v. *Hinchy* [1960] A.C. 748, H.L. at p. 767, which were adopted and followed by this Court in *Redford* v. *The Republic (Minister of Finance)* (1970) 3 C.L.R. 409 at p. 416. But, if the words of a statute are clear and unambiguous, and I find myself in agreement with counsel for the applicant, that they themselves indicate what must be taken to have been the

intention of Parliament, and there is no need to look elsewhere to discover their intention or their meaning. In *Vacher & Sons Ltd.* (*supra*), Lord MacNaghten had this to say at pp. 117 and 118 :-

> "Now it is 'the universal rule', as Lord Wensleydale observed in *Grey* v. *Pearson* (1857) 6 H.L.C. 61 at p. 106, that in construing statutes, as in construing all other written instruments, 'the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further'.
>
> Acts of Parliament are, of course, to be construed 'according to the intent of the Parliament' which passes them. That is 'the only rule', said Tindal C.J., delivering the opinion of the judges who advised this House, in the *Sussex Peerage Case* (1844) 11 Cl. & F. 85, at p. 143. But his Lordship was careful to add this note of warning: 'If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver'. Nowadays, when it is a rare thing to find a preamble in any public general statute, the field of inquiry is even narrower than it was in former times. In the absence of a preamble there can, I think, be only two cases in which it is permissible to depart from the ordinary and natural sense of the words of an enactment. It must be shown either that the words taken in their natural sense lead to some absurdity or that there is some other clause in the body of the Act inconsistent with, or repugnant to, the enactment in question construed in the ordinary sense of the language in which it is expressed."

With respect, I would follow and apply the words of Lord MacNaghten, because the language of our enact-

ment in the present case is precise and unambiguous, and no one can doubt what the words mean.

Directing myself with those judicial pronouncements and having examined the whole law including its preamble, as well as the arguments of both counsel, I have reached the view that the words of subsection 2(c) of our law are clear and unambiguous, they themselves indicating what the intention of the House of Representatives is, and there is no need to look elsewhere to discover their intention or their meaning. In my view, had I accepted the contention of counsel for the respondent, I would indeed speculate what the motive of the House was. In endeavouring to place the proper interpretation of the aforesaid section of our law, I propose to exclude consideration of everything excepting the state of the law as it was when the law was passed. Subject to this consideration, I think that the only safe course is to read the language of the law in what seems to be its natural sense. It seems to me, therefore, that the proper construction of subsection 2(c) of s. 7 is that a person shall be entitled to be registered as a civil engineer on the date he applied once he is an associate member of the Institution of Civil Engineers in London. With this in mind, and once the words are clear and unambiguous, I have to apply them as they stand, irrespective whether or not, as counsel for the respondent claimed. this result does not represent the real intention of the House of Representatives. once the procedure of the Institution of Civil Engineers in London has changed.

For the reasons I have endeavoured to advance, I would, therefore, accept the contention of counsel for the applicant, and declare that the decision of the respondent not to register the applicant in accordance with subsection 2(c) of s. 7 of our Law 41/62, was made under a misconception of the law and, therefore, is null and void and of no effect whatsoever. Needless to add. it is for the House of Representatives to speed up the proceedings in enacting an amending law on the lines suggested by counsel for the respondent.

Court: Do you claim costs Mr. Demetriou?

Mr. Demetriou: In view of the absence of my learned friend I shall agree the question of costs with him. Your

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Honour, and I do not think that an order for costs in these circumstances is needed.

Court: Order accordingly, costs to be agreed between counsel concerned.

Sub judice decision annulled.
Order for costs as above.