

1973
Feb. 26

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MOGLA
MOHAMMED
AHMED SAMI

MOGLA MOHAMMED AHMED SAMI,

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND ANOTHER,

Respondents.

(Case No. 441/71).

Alien—Holding valid passport—And valid employment permit—Which entitled said alien, under Regulation 11(2) of the Aliens and Immigration Regulations, to enter and remain in the Republic for the purpose of engaging in the profession of an 'artist' for a period of three months—Entry refused by the authorities at the Airport following instructions embodied in a circular issued by the Migration Officer (respondent 2) to the effect that such profession ought to appear on the passport—There being nothing in the relevant Law (The Aliens and Immigration Law, Cap. 105) or the Regulations made thereunder that the profession should so appear, the respondents acted in abuse or excess of powers in refusing entry as aforesaid.

Alien—Entry into Cyprus—Illegal refusal of the authorities to allow the applicant to enter Cyprus—Based on a circular issued in abuse and excess of powers—See supra.

Circulars—Issued by Superior Officers—Circular No. 283/61 dated May 27, 1970, issued by respondent 2—See supra; see further infra.

Circulars—Issued by higher authorities to subordinate organs—Their nature, objects and purposes—Circulars not binding on said subordinate organs—Not considered as creating rights and liabilities or as specifying legal relations—And so circulars are not classified among the executory acts which can be attacked by a recourse under

1973
Feb. 26
—

MOGLA
MOHAMMED
AHMED SAMI

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

Article 146 of the Constitution—It is however an accepted principle of case law that if in the application of a circular containing an illegal view an administrative executory act or decision is done or taken affecting a specified person—Then such person may attack the executory act itself for illegality viz. for non compliance with the statute, regulation etc. as wrongly interpreted by the circular in question (see Stassinopoulos on the Law of Administrative Disputes, 4th edn. p. 171 to 172).

Recourse under Article 146 of the Constitution—Circulars issued by superior authorities for the guidance of subordinate organs—Cannot as a rule be attacked by a recourse under that Article—See immediately hereabove.

Executory administrative acts or decisions—Done or taken in application of circulars containing an illegal view—Such executory acts or decisions may be attacked themselves by a recourse under Article 146 of the Constitution for non-compliance with the law as wrongly interpreted by the circular—See supra.

The applicant is an alien lady from Egypt and she is an artist (dancer) by profession. On October 8, 1971, she was granted an employment permit No. A700397 to work in Cyprus for a period of three months. On October 28, 1971, she arrived at the Nicosia airport but she was refused entry into the Republic by the authorities on the sole ground that on her passport (the validity of which was never in dispute) her profession was referred to as "housewife" and not as an "artist". There and then the applicant produced her identity card on which it was clearly stated that her profession was that of an artist dancer. The authorities at the airport based their decision not to allow the applicant to enter Cyprus on a circular No. 283/61, dated May 27, 1970, issued by the Migration Officer (respondent 2), whereby no entry should be allowed in Cyprus of "Egyptian Artists" unless, *inter alia*, on their passport it is written the word "artist". "musician" etc.

It is against the said refusal that the applicant filed her present recourse claiming a declaration that it is null and void on the ground that the conditions of entry into Cyprus are prescribed by Regulation 11(2) of the Aliens and Immigration Regulations made under section 20 of the relevant statute (*viz.* The Aliens and Immigration Law, Cap. 105) and

1973
Feb 26

—
MOGLA
MOHAMMED
AHMED SAMI

v

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

that, therefore, respondent 2 (the Migration Officer) issued the aforesaid circular acting in excess and abuse of powers in view of the fact that he exercised powers which are delegated by statute to the Council of Ministers by virtue of said section 20. That being so, it follows that the refusal of the authorities at the Nicosia Airport was not warranted by any legislative or other lawful provision.

Annulling the *sub judice* refusal of the authorities to allow entry into Cyprus of the applicant lady, the learned Judge of the Supreme Court :

- Held, (1). Illegal acts or decisions of a subordinate organ are not rendered legal simply because such organs had to follow instructions of a superior authority. Therefore, the only question that falls for consideration in this recourse is whether the circular in question (*supra*) contained an illegal view as to the meaning and application of the Aliens and Immigration Law, Cap. 105 and the Regulations made thereunder. The answer is in the affirmative.
- (2) It is common ground that the applicant in this recourse was in possession of a valid passport as well as of a valid employment permit. This permit entitled her under Regulation 11(2) of the Aliens and Immigration Regulations to enter and remain in the Republic of Cyprus for the purpose of engaging in the employment of an artist for a period of three months.
- (3) There is nothing in the Law or the Regulations that her profession ought to appear on her passport. Passports are usually issued for a period of five years and renewed for another period of five years. During this time a person may change his profession, but this does not necessarily appear on his passport.
- (4) So, in this particular case the Immigration Authorities and, particularly, the Police Constables at the Airport, who admittedly followed strict instructions contained in the circular (*supra*), acted in abuse and excess of powers conferred on them by law. Once an employment permit is issued to an alien who is the holder of a valid passport the

Immigration Authorities have no right to refuse him entry into the Republic. Therefore, the act of the respondents in refusing to allow the applicant to enter the Republic of Cyprus on October 28, 1971, is declared null and void.

1373
Feb. 26
—

MOGLA
MOHAMMED
AHMED SAMI

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

Sub judice decision annulled.

Per curiam : A circular usually purports to enlighten a subordinate administrative organ on the right interpretation which should be given as regards the application of the law, but it may also purport to guide these organs as to the best way, according to the judgment of the superior authority, of the exercise of the administrative discretionary powers of the subordinate organ. The object of the circular in both cases is that the administrative act or decision should be right and uniform; nevertheless, it is not binding on the said subordinate organ. For this reason the circular is generally not considered as creating rights and liabilities or specifying legal relations, and so is generally classified to non executory acts which cannot be attacked by a recourse for annulment. It is, however, an accepted principle of case law that if in the application of a circular containing an illegal view regarding the meaning of the law or the right of the action of an administrative organ, an administrative executory act is issued affecting a specified person, then he may attack the executory act; and the application for annulment will be made for non-compliance with the law as wrongly interpreted by the circular. (Stassinopoulos on the Law of Administrative Disputes, 4th ed. at page 171 to 172).

Recourse.

Recourse against the refusal of the respondents to allow applicant enter Cyprus.

1. *Typographos*, for the applicant.

S. *Georghiades*, Senior Counsel of the Republic,
for the respondents.

Cur. adv. vult.

1973
Feb 26

—
MOGIA
MOHAMMED
AHMED SAMI

v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

The following judgment was delivered by :-

MALACHTOS, J. : The applicant in this recourse is an alien from Egypt and she is an artist (dancer) by profession.

On the 8th October, 1971, the applicant on the application of a certain Artin Bahadourian, of Nicosia, was granted an employment permit No. A700397 to work in Cyprus for a period of three months.

On the 28th October, 1971, she arrived at the Nicosia airport but she was refused entry into the Republic by the authorities on the ground that on her passport her profession was referred to as housewife and not as an artist. There and then the applicant produced her identity card, *exhibit 2*, on which it was clearly stated that her profession was that of an artist dancer.

The authorities at the airport based their decision not to allow the applicant to enter Cyprus on a circular No. 283/61 dated 27th May, 1970, *exhibit 1*, issued by the Immigration Officer, respondent No. 2 in these proceedings.

On the 29th May, 1970, this circular was sent by the Chief of the Cyprus Police to the passport control centres for information and compliance. The said circular reads as follows :

"Egyptian Artists

I have been instructed to refer to the above subject and to inform you that *in no case their entry will be allowed in Cyprus unless :-*

- (a) They are issued with a visa specifically for Cyprus and Cyprus is referred to on the passport;
- (b) On their passport it is written the word 'artist' 'musician' etc.; disclosing so the real identity of the artist.

Please bring to the knowledge of all concerned in the passport control for issue of entry permits into Cyprus."

As a result of the refusal of the respondent authorities to allow the applicant to enter Cyprus the applicant was

obliged to stay at the airport till the next morning when there was available a line for Athens and left by flight No. 332 of the Olympic Airways. She instituted the present proceedings against the respondents claiming a declaration of the Court that the refusal by the respondents to allow applicant to enter Cyprus on 28th October, 1971, is null and void and of no legal effect.

The application is based on the following three grounds of Law :

1. That the circular issued by the Immigration Officer was issued in excess of jurisdiction and abuse of power in view of the fact that he exercised powers which are delegated by law to the Council of Ministers by virtue of section 20 of the Aliens and Immigration Law, Cap. 105;

2. The respondents were, when refusing the entrance of applicant to Cyprus, under a misconception of fact, in that they did not examine the actual profession of the applicant. And

3. The respondents acted on erroneous directions issued by respondent No. 2 and in particular as to the identification of the artists by perusal of the passport only which may be misleading.

It has been argued on behalf of the applicant that by the circular in question a condition is introduced regarding the entry into the Republic of Cyprus of Egyptian artists. Section 20 of the Aliens and Immigration Law, speaks clearly as to who is the appropriate authority to make regulations. And, in the present case, the appropriate authority to make regulations is the Council of Ministers. So, the Immigration Officer by issuing this circular, was acting in abuse of power.

It has further been argued that the decision of the respondents not to allow entry of the applicant in Cyprus is based on a misconception of fact as they did not examine all the facts concerning the real situation. In fact, the applicant produced at the airport her identity card on which the word "artist" as her profession, was written. Taking into consideration that the applicant had obtained an employment permit and she produced her identity card to the authorities, their refusal to allow her entry in order

1973
Feb. 26

—
MOGĀ
MOHAMMED
AHMED SĀMI

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

1973
Feb. 26

—
MOGLA
MOHAMMED
AHMED SAMI

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

to work as an artist amounts to a decision which was taken without examination of all the facts. So, there is a misconception of fact.

On the other hand, it has been submitted on behalf of the respondents, that from the contents of *exhibit 1*, paragraph (b), no Egyptian artists would be allowed to enter Cyprus unless on their passport their profession was written. It was not a matter for the police constables in charge of the Immigration at the Airport to ascertain the profession of the applicant but it was a matter to comply strictly with the instructions referred to in the circular. So, there is no misconception of fact in this case. It has further been submitted that the circular was issued legally. The issuing of circulars is not the same with the issuing of regulations which can only be made by the Council of Ministers under section 20 of the Law. The circular was issued by virtue of paragraph 2 of regulation 9 of the Aliens and Immigration Regulations. So, the police constables in charge of the Immigration at the Airport were right in not allowing the applicant to enter Cyprus.

Now, the instructions given to the authority that is about to issue the executory act, which instructions usually emanate from a higher authority, may be given either on the occasion of a particular case or, generally, in all cases of the same nature. In the latter case there instructions take the form of a circular. A circular usually purports to enlighten a subordinate administrative organ on the right interpretation which should be given as regards the application of the provisions of the law, but it may also purport to guide these organs as to the best way, according to the judgment of the superior authority, of the exercise of the administrative discretionary powers of the subordinate organ. The object of the circular in both cases is that the administrative act or decision should be right and uniform. However, in the second case the circular amounts to a kind of precautionary participation of the superior organ in the exercise by the subordinate organ of its administrative discretionary powers; nevertheless, it is not binding on the said subordinate organ, irrespective of the influence which the circular practically exercises in the majority of cases on the acts or decisions of such organs. For this reason the circular is generally not con-

sidered as creating rights and liabilities or specifying legal relations, and so is generally classified to non executory acts which cannot be attacked by a recourse for annulment. It is, however, an accepted principle, in Case Law, that if in the application of a circular containing an illegal view regarding the meaning of the Law or the right of the action of an administrative organ, an administrative executory act is issued affecting a specified subject, then he may attack the executory act. The application for annulment will be made for non compliance with the Law as wrongly interpreted by the circular (see Stassinopoulos on the Law of Administrative Disputes, 4th edition, at page 171 to 172).

1973
Feb 26
—

MOGLA
MOHAMMED
AHMED SAMI

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

It is clear from the above principles that the issue of circulars by Heads of Departments are not illegal as such; they become so only when containing an illegal view as regards the meaning of a law or any regulations made under such law. But even so, a circular cannot be attacked by a recourse for annulment unless in its application the administrative executory act that results from its application affects a specified person. So, in the case under consideration the applicant was entitled to file the present recourse and attack the decision of the respondents.

The question whether the Police Constables at the Airport were bound to follow the instructions of their superiors or not, is of no significance as in this recourse we are not concerned with their personal liability. It must, however, be stated here, that illegal acts or decisions of a subordinate organ, are not rendered legal simply because such organs had to follow instructions of a superior authority.

Therefore, the only question that falls for consideration in this recourse is whether the circular, *exhibit 1*, contained an illegal view as to the meaning and application of the Aliens and Immigration Law, Cap. 105, and the Regulations made thereunder.

It is common ground that the applicant in this recourse was in possession of a valid passport as well as of a valid employment permit. This employment permit entitled her under Regulation 11(2) of the Aliens and Immigration Regulations to enter and remain in the Republic of Cyprus for the purpose of engaging in the employment

1973
Feb. 26

—
MOGLA
MOHAMMED
AHMED SAMI

v.

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

of an artist for a period of three months. There is nothing in the Law or the Regulations that her profession ought to appear on her passport. Passports are usually issued for a period of five years and renewed for another period of five years. During this time a person may change his profession, but this does not necessarily appear on his passport.

So, in this particular case the Immigration Authorities and, particularly, the Police Constables at the airport, who admittedly followed strict instructions contained in the circular, *exhibit 1*, acted in abuse and excess of power conferred upon them by law. Once an employment permit is issued to an alien who is the holder of a valid passport the Immigration Authorities have no right to refuse him entry into the Republic. If for any reason the holder of such permit fails to take up the employment in respect of which such permit was issued, or having taken up employment fails to continue therein, then the employment permit shall cease to be effective and, shall be deemed to have been cancelled under Regulation 11(3) of the Aliens and Immigration Regulations.

Therefore, the act of the respondents in refusing to allow the applicant to enter the Republic of Cyprus on 28/10/71, is declared null and void.

Respondents to pay £20 costs to the applicant.

*Sub judice decision annulled.
Order for costs as above.*