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[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU,
A. LOIZOU, JJ.]

REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)
v.
TELEGRAPHOS
PUBLISHING
CO. LTD.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE PUBLIC INFORMATION OFFICE,

Appellants,

and

TELEGRAPHOS PUBLISHING CO. LTD.,

Respondent.

(Revisional Jurisdiction Appeal No. 154).

Press Law, Cap. 79—Printing or publication of newspaper—Title of newspaper—Receipt issued under s. 4 of the Law—Minister vested with discretionary power, under s. 11 of the law, to see whether proposed title is so resembling to any other title for which a receipt had already been issued and which was likely to cause confusion. 5

Constitutional Law—Freedom of speech and expression—Article 19 of the Constitution—Discretionary power granted to administration by virtue of s. 11 of the Press Law when issuing receipt under s. 4 of the Law—Does not contravene the said Article 19. 10

The point for consideration in this appeal was whether, in issuing a receipt under s. 4 of the Press Law, Cap. 79, the respondent Minister of Interior was legally bound to inquire whether the title of the newspaper in respect of which the receipt was being issued resembled the one of another newspaper for which a receipt had already been granted. The relevant sections were sections 4 and 11 of the Press Law, Cap. 79 which read as follows: 15

“ 4. Upon receiving a declaration and a bond the Minister of Interior 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 and such receipt shall be admissible in all proceedings as evidence of all that is stated therein relating to such declaration and bond. 20 25

11. Upon compliance with the requirements of sections 3 and 4 of this 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”.

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Held, (1) The Minister of Interior had a discretionary power under s. 11 of the Law, before issuing a receipt under s. 4, to consider whether the title of the newspaper in respect of which the receipt was being issued was resembling that of another newspaper in respect of which a receipt had already been issued, and decide whether to grant or not the receipt required under the Law. (See “*Kosmos Ltd.*” *Press v. The Republic* (1971) 3 C.L.R. 387).

(2) The discretionary power of the Administration under s. 11 of the Law does not violate Article 19 of the Constitution. (See *Attorney-General and Another v. Antigua Times Ltd.*, reported in “The Times” newspaper of the 20th May, 1975).

Appeal dismissed.

Cases referred to:

“*Kosmos Ltd.*” *Press v. The Republic* (1971) 3 C.L.R. 387, at p. 396;

Attorney-General and Another v. Antigua Times Ltd., reported in “The Times” newspaper of the 20th May, 1975;

Golder case (Strasbourg) (February 21, 1975);

Regina v. The Secretary of State for Home Department, ex parte Bhajan Singh, reported in “The Times” newspaper of the 23rd May, 1975.

30 Appeal.

Appeal from the judgment of a Judge of the Supreme Court (Malachos, J.) given on the 31st January, 1975 (Case No. 394/74) whereby Appellant’s decision to approve the registration and/or the issue of a newspaper with the title “Demokratiki” was declared *null* and *void*.

L. Loucaides, Senior Counsel of the Republic, for the appellant.

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A. Skordis, for the respondent.

G. Pelayias, for the interested party.

Cur. adv. vult.

TRIANTAFYLLIDES, P.: The judgment of the Court will be delivered by:—

HADJIANASTASSIOU, J.: In this appeal under s. 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33/64) the appellant-respondent appeals from the judgment* of a Judge of this Court, whereby he found in favour of the applicant that “respondent had a duty before issuing the receipt to the interested party to inquire as to whether the proposed by them title was so resembling to any other title for which a receipt had already been issued and which was likely to cause confusion”.

The fact are these:—

The applicant in Recourse No. 394/74, is the proprietor of the newspaper “Dimokratia” and having complied with the requirements of s. 3 of the Press Law, Cap. 79, the respondent granted them a receipt as in s. 4 of this law provided. This section, so far as relevant, is in these terms:—

“ Upon receiving a declaration and a bond 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 ... and such receipt shall be admissible in all proceedings as evidence of all that is stated therein relating to such declaration and bond”.

It is not in dispute that this newspaper was in circulation for a period of about 6 months after the issue of the said receipt by the authorities, as an afternoon newspaper, but later on the owners stopped producing it, and once again it appeared as a weekly newspaper on December 2, 1974.

In the meantime, when the newspaper “Dimokratia” was not in circulation, the interested party, having applied to the authorities, and having complied with the provisions of s. 3 (1),

* Reported in this Part at p. 28, *ante*.

was issued a receipt on November 28, 1974, for the publication of a newspaper under the title "Dimokratiki". In fact, this newspaper was published and circulated on December 2, 1974.

5 The applicant, feeling aggrieved, filed the present recourse on December 13, 1974, claiming the following relief:- " (a) Cancellation of the decision and/or administrative act of the P.I.O., and/or of the Minister of Interior dated 28.11.74, by which the registration and/or the issue of a newspaper under the title ' Dimokratiki' was approved; and (b) an order of the Court
10 prohibiting the registration and/or the issue and publication of the said newspaper".

The recourse was based on the provisions of s. 11 of the Press Law, which reads:-

15 " Upon compliance with the requirements of ss. 3 and 4 of this 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
20 to be likely to cause confusion".

On January 13, 1975, the respondents filed their opposition alleging (a) that they did not issue any administrative act by which the title, issue and/or publication of the newspaper "Dimokratiki" was approved; and (b) that the respondent had
25 no power under the law to prohibit the issue or publication of a newspaper under any title. This opposition was adopted also by the interested party, but we think we can state right away that the hearing of this recourse before the learned Judge proceeded on the understanding that when the administration issued the receipt required under s. 4 of our law, they had in
30 mind the legal opinion of the Attorney-General dated October 22, 1971, to the effect that in granting the said receipt, the administration was not exercising any discretionary power at all in the matter.

35 However, the learned trial Judge, having heard the contentions of both counsel, and having referred to the case of "*Kosmos Ltd.*" *Press v. The Republic of Cyprus* (1971) 3 C.L.R. 387, considered the question whether the administration were bound to issue the relevant receipt or whether they had a discretion
40 under the provisions of s. 11 of the law. In reaching his conclusion that the decision of the respondent to issue the said

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receipt to the interested party was *null and void*, the learned trial Judge said:—

“ section 11 of the Press Law, which although enacted prior to the coming into force of our Constitution is in conformity with Article 19 paragraph 3 thereof, clearly protects the right of the applicant as proprietor of the title of the newspaper ‘Dimokratia’ which right he acquired by the issue of the relative receipt to him by the respondents on 17th July, 1970. Consequently, the respondents had a duty before issuing the receipt to the interested party to inquire as to whether the proposed title by them was so resembling to any other title for which a receipt had already been issued and which was likely to cause confusion. Instead they acted under the erroneous impression that they had no say in the matter and that after compliance by the interested party with the provisions of section 3 of the law were bound to issue the relative receipt. Furthermore, it is clear that they would even issue a receipt to the interested party not only for a title resembling the title of the newspaper of the applicant but even for the very same one”.

Undoubtedly, in Cyprus every person has the right to freedom of speech and expression (which includes the freedom of Press) in any form, and this right is considered as one of the fundamental rights and liberties guaranteed by our Constitution. According to paragraph 2 of Article 19, “this right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers”. However, as it appears from paragraph 3 of the same Article, this right is not an absolute one, because “the exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary”.

We think we should have added that although under both the Press Law and Article 19 of the Constitution no licence is

5 required for the issue and publication of a newspaper and for exercising the rights contained in paragraphs 1 and 2 of Article 19, nevertheless, under paragraph 5 of the same Article, the Republic is not prevented from requiring the licensing of sound and vision, broadcasting or cinema enterprises.

10 The first case which was decided by a Judge of this Court relating to the provisions of s. 4 of the Press Law, is the case of "*Kosmos Ltd.*" *Press v. The Republic of Cyprus* (1971) 3 C.L.R. 387. In that case the point for determination before the learned trial Judge was whether the Minister of the Interior had any discretion under s. 4 of the said law to issue the receipt provided thereby or whether he was bound to issue same upon compliance by the applicant with the requirements of s. 3 of the law. The learned trial Judge, after having heard the con-
15 tentions of counsel, answered the question which he posed in this way at p. 396:—

20 " I will not go that far as to say that the Minister of the Interior is not possessed of any discretionary power whatsoever under s. 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.

25 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
30 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
35 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
40 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". 5

Counsel on behalf of the appellant has contended:

- (a) that the learned trial Judge was wrong in reaching the conclusion that the appellant was legally bound in accordance with the provisions of the Press Law, Cap. 10 79, to inquire whether the title of the interested party resembled the one of another person for which a receipt was already granted under the provisions of s. 4 of the said law; and
- (b) that nowhere is to be found in the provisions of s. 11 15 of the said law power to inquire whether the title of a newspaper resembles that of another before the issue of the said certificate.

On the contrary, it was argued on behalf of the respondent in supporting the decision of the learned trial Judge in the case in hand that, under section 11 the Minister of the Interior had a discretionary power to decide, after looking at the title of the newspaper, and to refuse the receipt, once the title was resembling that of another as to be likely to cause confusion. 20

We have listened very carefully to the contentions of all counsel concerned, and having considered also fully the case of "Kosmos Ltd." Press (*supra*), we find ourselves in agreement with the judgment of our learned brother A. LOIZOU, J., that the Minister of the Interior had a discretionary power under s. 11 before issuing the said receipt, to consider whether the title of the newspaper "Dimokratiki" was resembling that of the respondent and decide whether to grant or not the receipt required under the law, once he thought that the title of the interested party was so resembling that of the applicant as to be likely to cause confusion. 25 30 35

In our view, once the Minister has a discretionary power, he has to exercise it in accordance with the law and he is not expected to become simply a rubber stamp and not to care if the rights of a citizen are violated, as we were given to under-

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stand by counsel on behalf of the appellant. It appears that the only part of the law which affected the newspaper of the interested party, apart from the requirement of furnishing the administration with a bond in the sum of £500, was the granting to the administration the discretionary power to decide—once the title of a newspaper became the property of its proprietor—whether or not to grant a receipt to a proprietor of another newspaper, the title of which resembled that of the former, as to be likely to cause confusion. It is to be added that the presumption that the law was reasonably required had not been attacked by anyone, either before the learned trial Judge or before this Court, and in our view the discretionary right given to the administration is not of such a character as to lead to the conclusion that it was intended to violate the freedom of the press.

On the contrary, the Press Law in Cyprus is within the provisions of Article 19 of the Constitution, because the discretionary power granted to the administration was necessary in order to protect the rights of the proprietor of the title of a newspaper, and that therefore, cannot be treated as contravening the Constitution which clearly lays down that the exercise of the right to freedom of speech may be subject to such formalities, conditions, restrictions which are prescribed by law and are necessary only in the interests or for the protection of the rights of others. If further authority is needed that the discretionary power of the administration does not violate the law, or indeed Article 19, see the case of *The Attorney-General and Another v. Antigua Times Ltd.* reported in *The Times* of the 20th May, 1975, and which is on all fours with this case.

“ The Judicial Committee of the Privy Council held that two Acts of the Antigua legislature, the Newspapers Registration (Amendment) Act, 1971, and the Newspaper Surety Ordinance (Amendment) Act, 1971, which provided respectively that no person should publish a newspaper unless he has obtained a licence from the Cabinet and paid a licence fee of \$600 every year and that no person should publish a newspaper unless he has deposited a sum of \$10,000 (or effected a sufficient insurance policy) against liability for libel, were not repugnant to section 10 (1) of the Antigua Constitution Order, 1967, which declares that no person should be hindered in the enjoyment of his freedom of expression, including freedom to impart ideas and information without interference.

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The financial burden placed upon the Antigua Times, which began publication in 1970, was such that it resulted in effectively closing it down in 1971.

Their Lordships allowed an appeal by the Attorney-General and the Minister of Home Affairs Antigua, from a judgment of the West Indies Associated State Supreme Court (Antigua) in 1974 dismissing an appeal against a judgment of the High Court of Antigua granting declarations to the Antigua Times Ltd. that the two Acts in question were *ultra vires* the powers of the Antiguan legislature and were consequently void".

Then, Lord Fraser, in allowing the appeal said:-

"The newspaper contended that the provision of the Newspapers Registration (Amendment) Act relating to the annual licence was unconstitutional, first, because it subjected the right to publish to the grant of a licence at the discretion of the Cabinet, and, secondly, because it made the right to publish subject to the annual payment of \$600. It was provided in section 10 (2) of the Constitution that nothing done under the authority of any law should be held to be in contravention of the Constitution to the extent that the law was reasonably required (1) in the interests of defence, etc. or (2) for the purpose of protecting the reputations, rights and freedoms of other persons.

The only part of the Act which affected the newspaper was the requirement to pay the annual fee for the licence. The imposition of the licence fee to be paid annually was a tax and as such it did not infringe the Constitution if reasonably required to raise revenue for defence or the other purposes stated in section 10 (2). The presumption that the Act was reasonably required had not been rebutted, and their Lordships did not regard the amount of the fee as manifestly excessive and of such a character as to lead to the conclusion that it was not enacted to raise revenue but for some other purpose.

The Newspaper Surety Ordinance (Amendment) Act added a requirement to the already existing law of a deposit of \$10,000 or the provision of sufficient security against liability for libel. It could be argued that any expenditure required by law from those responsible for the publication

of a newspaper was a hindrance to its freedom of expression in that such expenditure must reduce the resources of the newspaper. The question was whether the law was reasonably required for the purpose of protecting the reputations and rights of others. If it was, then nothing in it or done under its authority was to be treated as a contravention of the Constitution.

The mere right of action for libel did not give adequate protection to the injured person's reputation. Damages were awarded to a libelled person to compensate for the injury suffered and unless there was a reasonable prospect of obtaining the damages awarded the injured person might be deterred from instituting proceedings. The fact that the deposit would be used to satisfy a judgment for libel was an inducement to the publishers of a newspaper to take care not to libel the reputation of others.

In their Lordships' opinion both Acts were covered by section 10 (2) of the Constitution and could not be treated as contravening the Constitution".

See also the *Golder* case (Strasbourg) (February 21, 1975) where it has been recognized by the European Court of Human Rights that the Convention implied limitations in the exercise of the human rights. Cf. also *Regina v. The Secretary of State for Home Department ex parte Bhajan Singh* reported in The Times of the 23rd May, 1975.

In the light of all the authorities, and having regard to the circumstances of this case, and for the reasons we have given, we would confirm the decision of the trial Judge that the administration wrongly did not exercise its discretionary powers, and, therefore, has acted contrary to the law and/or in excess or abuse of powers.

We would, therefore, dismiss the appeal with no order as to costs.

Appeal dismissed. No order as to costs.

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