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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS
N. PISSAS
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

IOANNIS N. PISSAS,

Applicant.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 29/75).

Administrative Law—Collective Organ—Meetings of—When considered as properly and lawfully convened—Public Service Commission—Omission to call member thereof to take part at a meeting and exclusion of such member on erroneous view that he could not participate at such meeting—Such omission renders decision taken at said meeting null and void. 5

Public Service Commission—Meetings, functions and quorum of—Omission to call member thereof to take part at a meeting and exclusion of such member on erroneous view that he could not participate at such meeting—Decision taken at said meeting null and void—Sections 10 and 11 of the Public Service Law, 1967 (Law 33/67). 10

The Supreme Court having annulled the secondment of the interested party to the post of Senior Technical Assistant in the Department of Town Planning and Housing (see (1974) 3 C.L.R. 476) the Public Service Commission met again on the 10th February, 1975 in order to fill the created vacancy. Only four out of the five members of the Commission attended this meeting; the fifth member, Dr. M. Economopoulos, took no part as he was not a member of the Commission on the 10th July, 1972, when the first decision of the Commission was taken. 15 20

In a recourse against the decision of the Public Service Commission taken at the aforesaid meeting of the 10th February 1975 whereby the interested party was again seconded to the said post: 25

Held, (1) that in order that a meeting of a collective organ be

considered as properly and lawfully convened, notice should be given to every one of its members, and in particular, in the way prescribed by the relevant legislation (see Kyriacopoulos Greek Administrative Law, 4th edition, Volume B, p. 23).

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5 (2) That though the Chairman and two other members present at any meeting of the commission, or if the Chairman is not present, four members present form a quorum (see s. 11(2) of Law 33/67), the presence of the members of a collective organ who constitute a quorum is not sufficient in order that the said
10 organ should be considered as lawfully constituted, but it must also be clear that the administration made possible the presence of all the members of the organ concerned by inviting them to be present at such a meeting in time (see Conclusions of Case Law of the Greek Council of State 1929–1959, p. 110 and Decision
15 810/36 of the Greek Council of State).

(3) That in the present case there was not only an omission to call Dr. Economopoulos to take part at the meeting of
10. 2. 75 at which the decision complained of was taken, but he was excluded on the erroneous view that he could not participate
20 at such meeting in view of the fact that on 10. 7. 72, when the first decision was taken, he was not a member of the Public Service Commission; and that, accordingly, the *sub judice* decision taken on 10. 2. 75 is declared null and void and of no legal effect whatsoever.

25 *Sub judice decision annulled.*

Cases referred to:

Case No. 810/1936 of the Greek Council of State.

Recourse.

30 Recourse against the decision of the respondent Public Service Commission whereby the interested party was seconded to the Temporary Development Post of Senior Technical Assistant in the Department of Town Planning and Housing.

K. Talarides, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent.

35 *Cur. adv. vult.*

The following judgment was delivered by:—

MALACHTOS, J.: In this recourse the applicant claims a declaration of the Court that the decision of the Public Service Commission dated 10.2. 75, by which Georghios Moysis, the

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interested party, was seconded to the Temporary Development Post of Senior Technical Assistant in the Department of Town Planning and Housing, as from 1.8.72, is *null* and *void* and of no legal effect whatsoever.

According to the relevant scheme of service this post is a promotion post from the immediately lower post of technical assistant.

There were in all four officers who possessed the required qualifications, including the applicant and the interested party.

In 1972 a temporary post of Senior Technical Assistant was created. When the filling of the said post was duly approved the Head of the Department by letter dated 8th June, 1972, submitted his recommendations on the candidates to the Chairman of the respondent Commission. The career of each of the four candidates, together with the relevant information regarding the experience and qualifications possessed by them, was outlined therein and recommended the applicant for secondment.

On the 10th July, 1972, the filling of this vacancy was considered by the respondent Commission in the presence of the Director of the Department who expressed his views.

As it appears from the relevant minute the respondent Commission by majority of three votes to two, decided to act contrary to the recommendations of the Head of the Department and appointed the interested party to the post with effect as from 1.8.72. The two dissenting members were Messrs. D. Theocharis and Y. Louca, who preferred the applicant. As a result, the applicant filed on 3.8.72 recourse No. 323/72 against the said decision of the Commission claiming its annulment.

On 29.11.74 judgment was issued in the said recourse by a Judge of this Court annulling the above decision on the ground of lack of due reasoning. The said judgment which is reported in (1974) 3 C.L.R. 476 ends as follows:

“ Due reasoning is a question of degree depending on the circumstances of each case and all the aforesaid were facts so special in nature that called for clear and cogent reasons which would leave no doubt, however little, as to the meaning of the reasons given in the *sub judice* decision.

In my opinion, in the light of all these facts, the general

reference to the contents of the confidential reports, a reference which might in other cases be sufficient to supplement the reasoning of an administrative decision, and the mention of the word 'unreliable' in quotes, are not what
5 could be called cogent reasons and do not come up to the necessary minimum standard required in the particular circumstances of this case for acting contrary to the most recent recommendation of the Head of the Department.

10 For these reasons the *sub judice* decision is annulled for lack of due reasoning which renders it contrary to law, that is to say, the established principle of Administrative Law and also in abuse and excess of power.

In view of this result, the other grounds of law relied upon by the applicant, need not be examined.

15 Furthermore, on account of the fact that the matter will come up for re-examination before the respondent Commission, I refrain from commenting on the merits of the candidates or making any comparison regarding the contents of the confidential reports produced, so that
20 nothing said in this judgment will in any way affect the exercise of the discretion of the respondent Commission."

As a result of the annulment of its decision the Public Service Commission met again on 10.2.75 in order to fill the created vacancy. The respondent Commission considered the same
25 candidates who qualified for the post on 10.7.72 when the annulled *sub judice* decision was taken. The Director of Town Planning and Housing was also present and expressed the same views as those expressed by him on 10.7.72 and recommended the applicant for secondment to the post. The Commission,
30 however, again decided against these recommendations by majority of three votes to one, its fifth member Dr. M. Economopoulos taking no part, and seconded the interested party with effect as from 1.8.72.

35 The applicant being again dissatisfied with the above decision of the Public Service Commission filed on 20.3.75 the present recourse.

40 One of the documents attached to the opposition, which was filed on 17.4.75, and described as enclosure No. 1, is an extract from the minutes of the meeting of the Public Service Commission which was held on 10.2.75.

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On 28.11.75, when this case came on for hearing, counsel for the applicant referred to the said enclosure No. 1, which was produced as *exhibit* 2, and observed that Dr. Economopoulos did not attend the meeting as he was not a member of the Commission on 10.7.72. This is clearly stated in the said minutes. 5

Counsel for applicant then applied, with the consent of counsel for the respondent, that this point be decided first as a preliminary legal issue.

It is not in dispute that after 10.7.72 Mr. D. Theocharis resigned his post and Dr. Economopoulos was appointed in his stead as from 1.8.73. 10

Counsel for applicant submitted that since Dr. Economopoulos was excluded from taking part at the meeting of the respondent Commission on the ground that he was not a member of the Commission on 10.7.72 when the interested party was first seconded to the Temporary Development Post of Senior Technical Assistant, the decision complained of is *null* and *void* due to the fact that the Commission was wrongly constituted. 15

The respondent Commission is a collective administrative organ and its functioning is regulated by the Public Service Law, 1967. According to section 10 of the said Law, the Chairman shall be the head of the Commission and its office, shall convene and preside at the meetings of the Commission and shall prepare the agenda of every meeting and cause them to be communicated to every member of the Commission at least twenty-four hours before the meeting. Under section 11 of the Law, if the Chairman is unable to attend and preside at any meeting the members present shall elect one from amongst themselves to preside at the meeting. The Chairman and two other members present at any meeting, or if the Chairman is not present, then four members present, shall form a quorum. 20
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So, there is no doubt that in the present case there has been a quorum of the Commission.

The question, however, that falls for consideration is whether the respondent Commission in this particular case was properly constituted or not. 35

In order that a meeting of a collective organ be considered as properly and lawfully convened, notice should be given to

every one of its members, and in particular, in the way prescribed by the relevant legislation (see Kyriacopoulos Greek Administrative Law, 4th edition, volume B, page 23).

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5 The presence of the members of a collective organ who constitute a quorum is not sufficient in order that the said organ should be considered as lawfully constituted, but it must also be clear that the administration made possible the presence of all the members of the organ concerned by inviting them to be present at such a meeting in time (see Conclusions of Case
10 Law of the Greek Council of State 1929–1959, page 110).

In Case No. 810/1936 of the Greek Council of State, reported in the Decisions of the Council of State 1936, vol. B, Part III at page 160, it has been decided that the omission to call a professor on Commercial Law to take part in the Council
15 of Commerce and Industry renders *null* and *void* the decision issued as such Council was considered as wrongly constituted.

In the present case there was not only an omission to call Dr. Economopoulos to take part at the meeting of the 10.2.75 at which the *sub judice* decision complained of was taken, but
20 he was excluded on the erroneous view that he could not participate at such meeting in view of the fact that on 10.7.72 when the first decision was taken by which the interested party was seconded to the Temporary Development Post of Senior Technical Assistant, was not a member of the Public Service Commission.
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For the reasons stated above the Decision of the respondent Commission taken on 10.2.75 by which the interested party was seconded to the Temporary Development Post of Senior Technical Assistant in the Department of Town Planning and
30 Housing, as from 1.8.72, is declared *null* and *void* and of no legal effect whatsoever.

Respondent to pay £20.- costs to the applicant.

Sub judice decision annulled.
Order for costs as above.