IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GLAFCOS COLOCASSIDES AND ANOTHER,

Applicants,

and

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

Respondents.

(*Cases Nos.* 115/72 *and* 116/72).

Income Tax—Company under the control of not more than five persons—Contributions by executive Directors to provident fund of Company's clerical staff—Not exempted from Income Tax—Section 19(1) (e) of the Income Tax Laws 1961-1969 and paragraph 3(d) of the Conditions Governing Approval of Funds for the Purpose of the Income Tax Laws.

Equality—Article 28.1 of the Constitution—Principle of equality—Meaning—Taxation Laws attacked as infringing doctrine of equality—Great latitude permitted to legislative discretion by the Judiciary—Paragraph 3(d) of the Conditions Governing Approval of Funds for the purpose of the Income Tax Laws—Excluding shareholders of company, under control of not more than five persons, from participating in provident fund—Does not violate Article 24 and 28 of the Constitution—As the conditions imposed by said paragraph fall within the area of social welfare and the differentiation made thereunder is a reasonable and not an arbitrary one—Section 47(1) of the Income Tax Laws 1961-1969.

Constitutional Law—Equality—Principle of equality—Taxation Laws—Articles 24 and 28 of the Constitution.

Taxation Laws—Attacked as infringing principle of equality—Great latitude permitted to legislative discretion by the Judiciary.

Both the applicants were employed by the Company S. & G. Colocassides Ltd., as executive directors and they both contributed to the provident fund of the Company's clerical staff. The respondent Commissioner refused to deduct from their taxable income, for the year of assessment 1970, the amounts which they contributed to the said fund and hence these recourses. *The respondent Commissioner was of opinion that* the applicants were precluded from participating in the said fund by virtue of the provisions of paragraph 3(d) of the Conditions Governing the Approval of Funds for the Purpose of the Income Tax Laws which runs as follows:

> "The employees participating in the fund shall not include the wife or husband of the employer or a personal or domestic servant nor any relation to a company under the control of not more than five persons shall include any of such persons or their wives or husbands".

It was not in dispute that the Company in question was under the control of not more than five persons within the meaning of the aforequoted paragraph 3(d).

Counsel for the applicants contended:

(a) That the Commissioner's refusal to deduct from the applicants' assessable income contributions to the clerical staff provident fund is contrary to the law because, in accordance with the provisions of s. 19 (1) (e)* of the Income Tax Laws 1961-1969, clearly and unambiguously it is stated that every contributor to a provident fund must be exempted; and that the words appearing in subsection 1(e) "subject to such conditions as he may determine" should be given the meaning that the Commissioner is not entitled to exclude certain individuals, but only to impose conditions with regard to the fund;

(b) that if the Commissioner was allowed to exclude certain persons by relying on the words "subject to such conditions", he would, in effect, be acting contrary to the command of the law, *viz.,* to exempt all persons; and

(c) that the decision complained of discriminates against each applicant in that the contribution of other employees of the Company S. & G. Colocassides Ltd., is being deducted from their taxable income and thus Articles 24** and 28** of the Constitution are being contravened.

---

* Quoted at p. 372 *post.*

** Quoted at p. 373 *post.*

On the other hand Counsel for the respondents mainly contended that the respondent Commissioner rightly excluded the said amounts because in accordance with section 19(1) (e) of the Income Tax Laws, 1961-1969 the individual's contribution towards the fund is only allowed as a deduction if it is paid towards a fund which is approved beforehand by the Commissioner and the fund in question was not so approved.

Held, (1) that the decision of the Commissioner to refuse to both applicants their claim on the ground that they were precluded from participating in the said fund, was a valid one and was in accordance with paragraph 3(d) of the Conditions Governing the Approval of Funds for the Purpose of the Income Tax Law, once the Company was under the control of not more than five persons; that, moreover, the amounts paid to the said provident fund were rightly excluded by the Commissioner who found that those sums were not deductible expenses in accordance with section 19(1) (e) of Law 58/61 (as amended by s. 13 of Law 60/69); that, therefore, the argument put forward by counsel as to the true construction of section 19(1) (e) is not a valid one once an individual's contribution to a fund is only allowable by the Commissioner as a deductible amount if it is paid into a fund which is approved in advance by the Commissioner; and that, accordingly, counsel's contention must fail once both applicants were not entitled to become members of the Company's provident fund.

(2) That when taxation laws are attacked as infringing the doctrine of equality the Legislative discretion is permitted by the Judiciary great latitude (see *Matsis* v. *Republic* (1969) 3 C.L.R. 245); that Article 28 of the Constitution safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things; that in the area of economics and social welfare the principle of equality, under Article 28 of the Constitution, is not violated merely because the classifications made by the laws are imperfect; that the contents of the said paragraph 3(d) are not discriminatory against the applicants because they fall within the area of social welfare and therefore the Commissioner's decision does not violate Articles 24 and 28 of the Constitution; that the differentiation in excluding the applicants from contributing to the fund in question is a reasonable and not an arbitrary one and it is also consistent with the wording of section 47(1) of the Income Tax Laws 1961-1969 where the Legislature uses the wording

"company controlled by not more than five persons"; and that, accordingly, the recourses must fail.

Applications dismissed.

Cases referred to:

Xinari and *The Republic,* 3 R.S.C.C. 98;

Matsis v. *Republic* (1969) 3 C.L.R. 245 at pp. 259, 265, 266;

Anastassiou v. *Republic* (reported in this Part at p. 91 at pp. 127-128 *ante*);

Jefferson v. *Hackney,* 32 L. Ed. 2d 285 at p. 296;

Allied Stores of Ohio v. *Bowers,* 3 L. Ed. 2d 480 at pp. 484, 485;

Lehnhausen v. *Lake Shore Auto Parts Co.,* 35 L. Ed. 2d 351 at pp. 354-355.

Recourses.

Recourses against the refusal of the respondent Commissioner of Income Tax to exempt from income tax applicants' contributions to the provident fund of the Company S. & G. Colocassides Ltd.

A. Triantafyllides, for the applicants.

A. Evangelou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: The applicants in these two consolidated proceedings under Article 146 of the Constitution, seek to challenge the decision of the respondents and claim a declaration that the assessments Nos. 2-2002/AD/71/70 and 2-1971/AD/71/70, in so far as they do not deduct from the taxable income of the first applicant the amount of £250 and from the second applicant the amount of £200, being each applicant's contribution to the provident fund of S. & G. Colocassides Ltd., is *null* and *void* and of no effect whatsoever; and/or the decision of the respondents not to deduct the above sum in each case from the taxable income of each applicant for the year of assessment 1970 is *null* and *void* and of no effect whatsoever.

Indeed, the only ground relied upon by counsel in the present recourse is that the decision complained of discriminates against each applicant in that the contribution of other employees of the company S. & G. Colocassides Ltd. is being deducted from their taxable income and thus Articles 24 and 28 of the Constitution are being contravened.

The facts are simple: Both the first applicant Mr. Glafcos Colocassides and the second applicant Mr. Christos S. Pantzaris, are employed as executive directors by S. & G. Colocassides Ltd., and although both contributed regularly to the provident fund, the respondents refused to deduct from their taxable income for the year of assessment 1970 the amounts of £250 and £200 respectively, each applicant's contribution to the provident fund of the company in question during 1970, when they sent their return of income for the year of assessment 1970, derived both from the aforesaid firm and Glamico Ltd., as well as from dividends and interest, those sums to which I have referred earlier.

The respondents' claim on the ground that the applicants were precluded from participating in the aforesaid fund was based on paragraph 3(d) of the Conditions Governing the Approval of Funds for the Purpose of the Income Tax Law, which is in these terms:-

> "The employees participating in the fund shall not include the wife or husband of the employer or a personal or domestic servant nor any relation to a company under the control of not more than five persons shall include any of such persons or their wives or husbands".

With regard to the factual issue as to whether the said company was under the control of not more than five persons, it appears that the issued and fully paid share capital of the company S. & G. Colocassides Ltd. amounted in December 31, 1970, to £180,000.- and more than half of those shares issued were held by less than five persons:-

Sp. Colocassides	10,000 shares
Geo. Colocassides	28,800 shares
Glafkos S. Colocassides	41,944 shares

Michalakis Geo. Colocassides	30,200 shares
Annika Chr. Pantzari	18,300 shares.

There is no doubt that the company in question was under the control of not more than five persons, and it becomes clear that in accordance with the aforesaid paragraph 3(d) of the conditions governing the approval of funds for the purposes of the Income Tax Law, both applicants were not entitled to become members of the company's provident fund. Furthermore, the question of the participation of executive directors in the company's provident fund was raised by the first applicant in his capacity as managing director before the submission of his personal return to the income tax office. Indeed, on April 20, 1970, the first applicant addressed a letter to the Commissioner of Income Tax in these terms:-

"The Provident Fund of our clerical staff is, at the moment, being reviewed and we shall shortly be sending you the revised regulations for your approval.

Before doing so, however, we would like to clear up one point with you. Although the Executive Directors are considered to be employees of the Company and they are treated as such by the Government, it has been your policy not to allow them to become members of the Provident Fund. The remuneration of the Executive Directors consists of a fixed salary, a director's fees and a percentage on the operating profit of the Company, and, in our opinion, they should be allowed to become members of the Provident Fund and at least their fixed salary should be taken into account for the purpose of the Fund.

We shall be obliged to have your decision on the matter so that we may be able to consider the course we should follow". (See *exh.* 5).

On May 4, 1970, the Commissioner of Income Tax in reply to the first applicant said:-

"I wish to refer to your letter CSC/PC of the 20th April, 1970, and to inform you that the persons not entitled to become members of a Provident Fund are the shareholders of the employer company.

2. So long as this condition is observed, I see no objection to the Executive Directors of your Company to become members of the above Fund, provided they are not shareholders in the said company". (See *exh.* 6).

There was further correspondence and on July 10, 1970, the first applicant addressed a letter again to the Commissioner of Income Tax and requested him that in the light of his letter dated May 4, 1970, and subsequent discussions that he had both with him and with Mr. A. Strovolides on the above subject, they would be pleased if he would let them have his final decision.

Finally, on July 16, 1970, the Commissioner of Income Tax in reply told the first applicant that he continued to hold the view that controlling directors were excluded from approved funds. (See *exh.* 8).

Both applicants, feeling aggrieved, filed the present recourses, and on July 4, 1972, counsel on behalf of the respondent opposed both applications, and the point of law taken in both was that the decision complained of was properly and lawfully made under section 19(e) of the Income Tax Laws 1961-1969 after relevant facts and circumstances were taken into consideration by the respondents.

The position in England with regard to funds is that the Commissioners of Inland Revenue are given power to approve superannuation funds, exercising their powers under the provisions of s. 379 of the Income Tax Act, 1952. The Commissioners may not approve a fund under section 379(3) of the said Act unless they are satisfied that the fund is *bona fide* established. Furthermore, in accordance with Simons Income Tax (Replacement) Vol. 1 paragraph 1207 at p. 490, "If the scheme does not satisfy the condition that its main benefits are mentioned in s. 387(2) (r), it cannot be approved. The Commissioners need not approve a scheme which does not satisfy the further conditions laid down in s. 388(1) set out above, but have a discretion in special circumstances to approve a scheme which does not satisfy all those conditions".

Now, as to the definition of "controlling director" at p. 490 under letter (q) I read:-

"'Controlling director' is defined by s. 390(1) as meaning:- A director of a company, the directors whereof have a controlling interest, therein, who is the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control more than five per cent of the ordinary share capital of the company, and for the purposes of this definition -

(a) 'company' means a company within the meaning of the Companies Act, 1948, or the Companies Act (Northern Ireland), 1932".

Now, it appears further that the first applicant was well aware that controlling directors including himself were excluded from the fund. But in spite of that, the returns were sent to the Commissioner regarding the year of assessment 1970 and an assessment was raised on December 10, 1971. An objection was filed by the first applicant on December 18, 1971, and the objection was determined by the Commissioner on February 14, 1972, whereby the amount paid towards the employees provident fund was held, I repeat, not to be an allowable deduction. The same answer was given to the second applicant on February 5, 1972.

The first question which is posed is whether the Commissioner's refusal to deduct from applicants' assessable income the contributions to the clerical staff provident fund of the firm in question is valid or not. Counsel for the applicants has contended (a) that the Commissioner's refusal to deduct from the applicants' assessable income contributions to the clerical staff provident fund is contrary to the law because, in accordance with the provisions of s. 19(1) (e) of the Income Tax Laws 1961-1969, clearly and unambiguously it is stated that every contributor to a provident fund must be exempted; and that the words appearing in subsection 1 (e) "subject to such conditions as may be determined" should be given the meaning that the Commissioner is not entitled to exclude certain individuals, but only to impose conditions with regard to the fund; and (b) that if the Commissioner was allowed to exclude certain persons by relying on the words "subject to such conditions", he would, in effect, be acting contrary to the command of the law, *viz.*, to exempt all persons.

On the contrary, counsel for the respondent contended that the Commissioner rightly excluded the said amounts because in accordance with section 19(1) (e), the individual's contribution towards the fund is only allowed as a deduction if it is paid towards the fund which is approved beforehand by the Commissioner. But counsel went on to argue, once the fund in question was not approved by the Commissioner and the first applicant was well aware that it was not an approved fund regarding himself, and the argument of the other side cannot stand. Furthermore, counsel contended that from the conditions governing the approval of such fund, and in the light of the shareholding of the company which shows that the said company was under the control of not more than five persons, the applicants were not entitled to contribute to the company's provident fund and the Commissioner had no alternative but to disallow the amount complained of by both applicants.

I think I can state at the outset that in deciding this case I can derive no help from the position in England because the powers of the Commissioner of Inland Revenue are based on a special statutory provision. I would, therefore, turn to s. 19 which so far as relevant, says that:-

> "19(1) Subject to the provisions of sub-section (2) and section 20, in ascertaining the chargeable income of any individual who -
>
> (e) shall have made a contribution to a pensions, provident or other society or fund which may be approved by the Commissioner subject to such conditions as he may determine .....
>
> there shall be allowed a deduction of the annual amount of the premium paid by him for such insurance or of the amount of such premium or contribution, as the case may be".

Having considered very carefully the contentions of counsel for the applicants, I have reached the conclusion that the decision of the Commissioner to refuse to both applicants their claim on the ground that they were precluded from participating in the aforesaid fund, is a valid one, and is in accordance with paragraph 3(d) of the conditions governing the approval of the provident fund of the company in question, once the said company was under the control of not more than five persons. But, I would go further and add that the amounts of £250 and £200 respectively were rightly excluded by the Commissioner who, as I said earlier, found that those sums were not deductible expenses in accordance with s. 19(1) (e) of Law 58/61 (as amended by s. 13 of Law 60/69) and, therefore, the argument put forward by counsel as to the true construction of the aforesaid section 19(1) (e), in my opinion, is not a valid one, once, I repeat, an individual's contribution to a fund is only allowable by the Commissioner as a deductible amount if it is paid into a fund which is approved in advance by the Commissioner. That this is so it was not challenged; I would, therefore, dismiss this contention of counsel once both applicants were not entitled to become members of the company's provident fund for the reasons I have given at length.

As I have said earlier in this Judgment, the only ground of law raised in both consolidated applications was that the decision of the Commissioner discriminated against the applicants and that Articles 24 and 28 of the Constitution were contravened. Indeed, Article 24 says that:-

> "1. Every person is bound to contribute according to his means towards the public burdens.
>
> 2. No such contribution by way of tax, duty or rate of any kind whatsoever shall be imposed save by or under the authority of a law".

Article 28 is in these terms:-

> "1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.
>
> 2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution".

In the light of the command of the Constitutional drafters, counsel for applicants argued that the decision of the Commissioner is discriminatory because there was no reasonable differentiation in the exemption put forward, because both the directors and the rest of the employees are the paid servants of the company and are receiving salary.

The mere fact that both applicants are also shareholders, counsel went on to add, does not change the position once they pay tax on the profits of the company in the same way as any employee of the company who may be a shareholder in another company. He relies on the principle of equal pay for equal work expounded in *Jenny Xinari* and *The Republic,* 3 R.S.C.C. 98. Counsel further argued that the decision of the Commissioner was wrong and that no rational reason was given for inserting in the conditions governing the approval of the fund, the arbitrary figure of not more than five persons; and that the onus remains on the other side to show why the director of a company under the control of not more than five persons, should not be allowed to participate in the fund.

On the contrary, counsel for the respondents argued that the number of five persons is not arbitrary or discriminatory because it is consistent with section 47(3) of the Income Tax Laws 1961-1969. Counsel further contended that one of the reasons for the exclusion of controlling directors from the provident fund, and the distinction between them and ordinary directors and employees remains the fact that in the case of the former there can be no limitation in the fixing of salaries and other benefits with the result that they can do whatever they like. But there is another reason, counsel argued, and that is the anti-avoidance provision which was formulated in *Andreas Matsis* v. *The Republic,* (1969) 3 C.L.R. 245, where it was laid down that it is reasonable to make provisions, the object of which is to frustrate tax evasion. Finally, counsel argued that regarding the point of constitutionality of taxing statutes, the Court should have regard to the principles expounded in *Matsis* case (*supra*), *viz.,* that the power of the state to classify for purposes of taxation is of a wide range and flexibility so that it could adjust its system of taxation in all proper and reasonable ways.

Having considered the contentions of both counsel, I think I should turn to the case of *Andreas Matsis* v. *The Republic,* (*supra*) which was decided by the Full Bench. In that case section 7(d) of the Estate Duty Law, 1962 (Law No. 67/62) was attacked by the applicant on the ground that its provisions and particularly the "three years provision" contravene the principle of equality safeguarded by Article 28 of the Constitution with regard to gifts inter vivos. Mr. Justice Triantafyllides (as he then was) delivered the Judgment of the Court and said at pp. 259 and 265:-

> "..... it must not be lost sight of that when taxation laws are attacked on the ground that they infringe the doctrine of equality, the Legislative discretion is permitted by the Judiciary great latitude, in view, especially, 'of the inherent complexity of fiscal adjustment of diverse elements' and because 'the power of the Legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and reasonable ways' (see the decision of the Supreme Court of India in *Khandige* v. *Agricultural I.T.O.* as referred to in Basu's Commentary on the Constitution of India, 5th ed. vol. 1 p. 464".......

> "The object of our provision in question is, obviously, to frustrate evasion of estate duty through transactions so proximate to the death of a donor that it is reasonable to treat them as being intended to lessen the estate duty payable on his death. The *bona fides* of such transactions does not alter the position because a transaction may be a *bona fide* one, namely, real and genuine for all intents and purposes, and yet still have as its object the avoidance of payment of estate duty (see Green's Death Duties 5th ed. p. 15)".

Finally, the learned Justice concluded as follows at p. 266:-

> "Thus, to a considerable extent, gifts which were clearly not motivated by an intention to defeat the object of the estate duty legislation are excluded from the notion of the taxable estate of the deceased. It is correct that not all such gifts can be excluded by virtue of the aforementioned provisos; and thus, there

can, indeed, be instances of individual hardship resulting because of the effect of the 'three years' provision'; but in considering whether or not classification for taxation purposes contravenes the principles of equality due allowance has to be made for the fact that it is impossible to expect any such classification to guard against all possible individual cases of hardship; absolute equality is neither required by the said principle nor is it feasible".

It was decided by the Supreme Court in a very recent case, in *Nicos Anastassiou* v. *The Republic,* (reported in this Part at p. 91 *ante*), that Article 28 of the Constitution safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things, both as far as equality before the law is concerned, and discrimination thereof.

Delivering a separate judgment in that case, I said at pp. 127-128.

"It seems to me that the approach of this Court regarding this complaint has been clearly stated in a number of authorities dealing with taxation, starting with the case of *Mikrommatis and The Republic,* 2 R.S.C.C. 125, and *Matsis* v. *The Republic,* (1969) 3 C.L.R. 245, which was decided by the Full Court. These authorities show that the principle enunciated is that Article 28 safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things, both as far as equality before the law is concerned and discrimination thereof. Because this principle has ever since been reiterated in a line of other cases, I do not think it is necessary to quote other authorities to substantiate this point further. I would, therefore, contend myself by simply adopting and following the principle already stated. Testing the constitutionality of Law 55 of 1974, I have taken into consideration that once all the salaried and self-employed persons contribute to the same cause, I do not think that there is room for the criticism by counsel that because the employees of the government of Cyprus enjoy a tenure of office, in contrast to the other employees working at the Sovereign bases, that this results in a discriminatory or unequal treatment, contrary to Article 28 of the Constitution. I would, therefore, dismiss this contention of counsel also, once the purpose of the law is to alleviate the suffering of a lot of other Cypriots.

Having reached this conclusion, and because the applicant has failed to satisfy me that the provisions of Law 55 of 1974 are unconstitutional beyond reasonable doubt—and the onus remains on him—I would dismiss this application, once I have not been persuaded that the said law contravenes the principles already enumerated in the cases quoted earlier".

The approach of the Supreme Court of the United States of America in *Jefferson* v. *Hackney,* 32 L. Ed. 2d 285, was presented by Mr. Justice Rehnquist, who said at p. 296:-

"This Court emphasized only recently in *Dandridge* v. *Williams,* 25 L. Ed. 2d 491, 501, that 'in the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect'."

In *Lehnhausen* v. *Lake Shore Auto Parts Co.,* 35 L. Ed. 2d 351, Mr. Justice Douglas said at pp. 354-355:-

"The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination. *Harper* v. *Virginia Board of Elections,* 16 L. Ed. 2d 169. Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation".

In *Allied Stores of Ohio* v. *Bowers,* 3 L. Ed. 2d 480, Mr. Justice Whitaker, delivering the opinion of the Court said at pp. 484, 485:-

"The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value . . . . .

But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation . . .' If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law".

I think I should have added that the concept of the principle of equality binds not only the legislator but also the administrator of the State: See Svolos & Vlachos on the Constitution of Greece, Vol. (A) (1954) edn. at p. 187 et seq. where the whole concept of the principle of equality is discussed by the text writers at length.

In the light of those weighty judicial pronouncements as to the concept of equality, I have reached the view that the contents of paragraph 3(d) of the conditions governing the approval of funds by the Commissioner are not discriminatory against the applicants because such conditions fall within the area of social welfare and, therefore, the

Commissioner's decision does not violate Articles 24 and 28 of the Constitution; and that the differentiation in excluding the applicants from contributing to the fund in question is a reasonable and not arbitrary one, and it is also consistent with the wording of s. 47(1) of the Income Tax Laws 1961-1969 where the legislature uses the wording "a company controlled by not more than five persons".

Having reached the conclusion, as I have said earlier, that the decision of the Commissioner is a valid one, and that it creates no discrimination, I think I should add that it is no disrespect to counsel for the respondents in not deciding the two legal points raised, (a) as to whether the first applicant filed his recourse within the time limits laid down in Article 146 of the Constitution; and (b) whether the first applicant had a legitimate interest to attack the decision of the Commissioner, once he accepted the latter's decision regarding the approved conditions governing the approval of funds without reservation.

For the reasons I have given, I leave both points open, because, in my view, once I have decided that a decision of the Commissioner is valid, no legal purpose is served in deciding those two points. Both applications, therefore, dismissed but in the circumstances I make no order as to costs against the applicants.

Applications dismissed.
No order as to costs.