

1981 April 2

[TRIANTAFYLIDES, P.]

IN THE MATTER OF AN APPLICATION BY EMILIOS A.
FRANGOS FOR LEAVE TO APPLY
FOR ORDERS OF PROHIBITION AND CERTIORARI,

AND

IN THE MATTER OF CASE NO. 3/80 OF THE
MEDICAL DISCIPLINARY BOARD.

(Application No. 7/81).

5 *Certiorari—Prohibition—Article 155.4 of the Constitution— Application for leave—Principles applicable—Disciplinary proceedings before Medical Disciplinary Board—Whether administrative proceedings coming within the ambit of Article 146.1 of the Constitution and not within the ambit fo Article 155.4—Leave to apply for orders of certiorari and prohibition in relation to such proceedings granted.*

10 *Medical Etiquette Regulations, 1972—Whether regulation 25 ultra vires the enabling section 13(1) (b) of the Medical (Associations, Discipline and Pension Fund) Law, 1967 (Law 16/67) and contrary to Articles 25 and 26 of the Constitution.*

15 This was an application for leave to apply for orders of prohibition and certiorari in relation to disciplinary proceedings which were pending against the applicant before the Medical Disciplinary Board.

Held, (I) on the question whether the Court possesses jurisdiction to grant the applied for leave :

20 That this Court would not have possessed jurisdiction if it was clear that the disciplinary proceedings in question are only of administrative nature ; that as, at the present stage, this Court is not prepared, on the basis of the material before it, to pronounce that the said disciplinary proceedings are, in view of their essential nature, administrative proceedings coming within the ambit of Article 146.1 of the Constitution, and, therefore, not within the ambit of Article 155.4 of the Constitution,

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under which orders of certiorari and prohibition can be made, it cannot, at this stage, refuse, on the ground of absence of jurisdiction, the leave applied for.

Held, (II) on the merits of the application :

That leave can be granted if the applicant satisfied this Court that he has made out a prima facie case sufficient to justify the adoption of such a course ; that at this stage, a sufficient prima facie case that regulation 25 of the Medical Etiquette Regulations of 1972—made under section 13(1) (b) of the Medical (Associations, Discipline and Pension Fund) Law, 1967 (Law 16/67)—under which the relevant disciplinary proceedings have been instituted against the applicant, might be found to be ultra vires the section under which it was made, as well as contrary to the Constitution and, particularly, Articles 25 and 26 thereof ; that, therefore, leave to apply for orders of certiorari and prohibition, or for either of them, must be granted and in view of the leave granted in this respect the relevant proceedings before the Medical Disciplinary Board shall be stayed for a period of three weeks from today.

Application granted.

Cases referred to :

Vassiliou and Another v. Police Disciplinary Committees (1979) 1 C.L.R. 46 ;

Economides v. Military Disciplinary Board (1979) 1 C.L.R. 177 ;

Papasavvas v. Educational Service Committee (1979) 1 C.L.R. 681 ;

In re Azinas (1980) 1 C.L.R. 466 ;

In re Malikides (1980) 1 C.L.R. 472.

Application.

Application for leave to apply for orders of prohibition and certiorari in relation to disciplinary proceedings against the applicant in case No. 3/80 which is pending before the Medical Disciplinary Board.

A. Myrianthis, for the applicant.

TRIANAFYLLIDES P. gave the following decision. The applicant seeks leave to apply for orders of prohibition and certiorari

in relation to disciplinary proceedings against him in case No. 3/80 which is pending before the Medical Disciplinary Board and which is fixed for hearing this afternoon.

5 The first issue which I have had to examine is whether, in the light of the nature of the aforementioned Board, I possess jurisdiction to grant the applied for leave.

10 I would not have possessed jurisdiction if it was clear that the disciplinary proceedings in question are only of administrative nature (see, *inter alia*, *Vassiliou and another v. Police Disciplinary Committees*, (1979) 1 C.L.R. 46 and *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177).

15 As, at the present stage, I am not prepared, on the basis of the material before me, to pronounce that the said disciplinary proceedings are, in view of their essential nature, administrative proceedings coming within the ambit of Article 146.1 of the Constitution, and, therefore, not within the ambit of Article 155.4 of the Constitution, under which orders of certiorari and prohibition can be made, I have decided that I cannot, at this stage, refuse, on the ground of absence of jurisdiction, the leave applied for. The issue of jurisdiction will have to be determined finally later at the outset of the consideration of the merits of the applicant's application for orders of certiorari and prohibition (see, in this respect, *Papasavvas v. The Educational Service Committee*, (1979) 1 C.L.R. 681).

25 Leave can be granted in a case of this nature only if the applicant satisfies me that he has made out a prima facie case sufficient to justify the adoption of such a course (see, *inter alia*, *Vassiliou, supra*, *In re Azinas*, (1980) 1 C.L.R. 466 and in *In re Malikides*, (1980) 1 C.L.R. 472).

30 Counsel for the applicant has made out, in my view, at this stage, a sufficient prima facie case that regulation 25 of the Medical Etiquette Regulations of 1972—made under section 13(1) (b) of the Medical (Associations, Discipline and Pension Fund) Law, 1967 (Law 16/67) and published in the Official Gazette of the Republic on November 10, 1972 (No. 206 in the Third Supplement, Part I)—under which the relevant disciplinary proceedings have been instituted against the applicant, might be found to be ultra vires the section under which it was made, as well as contrary to the Constitution and, particularly, 35 40 Articles 25 and 26 thereof.

I have, therefore, decided to make the following order:

The applicant is granted leave to file, within three weeks from today, an application for orders of certiorari and prohibition, or for either of them, and in view of the leave granted in this respect today the relevant proceedings before the Medical Disciplinary Board shall be stayed for a period of three weeks from today; and if an application for orders of certiorari and prohibition, or for either of them, is filed, as aforesaid, within three weeks from today, then the proceedings in question before the Board shall continue to be stayed until further order of this Court. 5 10

Copies of this order granting leave are to be delivered to the Chairman of the Medical Disciplinary Board and to the General Secretary of the Pancyprian Medical Association and both the Board and the Association should be made respondents to the application for orders of certiorari and prohibition or for either of them. 15

Application granted.