

1984 September 27

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS AVRAAM,

Applicant.

v.

THE PORTS AUTHORITY OF CYPRUS,

Respondents.

(Case No. 244/83).

Cyprus Ports Authority Law, 1973 (Law 38/73)—Management Board of—Delegation of disciplinary powers to a Sub-Committee—Board has an unfettered discretion in the matter by virtue of section 8 of the Law.

Competence—Statutory competence—Delegation of—Principles applicable—Management Board of Cyprus Ports Authority—Vested with unfettered discretion to delegate its disciplinary powers to a Sub-Committee—Section 8 of the Cyprus Ports Authority Law, 1973 (Law 38/73).

5

On February 19, 1983 the Management Board of the respondents delegated Authority to a Sub-Committee, consisting of the Chairman of the Board and two of its members, to deal with disciplinary accusations against the applicant and decide accordingly. At the end of its deliberations the Sub-Committee found the applicant guilty of grave and unpardonable conduct and decided to revoke his licence as a port worker. Hence this recourse:

10

15

Counsel for the applicant mainly contended:

- (a) That in the absence of express power to delegate disciplinary power or functions, it is impermissible to do so, and, any attempt in that direction must be disowned as illegal.

20

- (b) That the delegation if permissible by the provisions of s.8 of Law 38/73 was ultra vires the law because of failure on the part of the Management Board to define the scope of the authority of the Sub-Committee;
- 5 (c) That the decision was, in any event improper because of failure to specify the reasons for the delegation and explain departure from the original decision of the Board to deal with the matter itself.

10 *Held*, that the exercise of disciplinary power or functions and, generally the exercise of functions of a broadly judicial character cannot be delegated in the absence of express authorisation by the law vesting the competence in a particular body; that section 8 of the Cyprus Ports Authority Law, 1973 (Law 38/73) places no constraint on the power to delegate;

15 Management Board has an unfettered discretion in the matter subject only to the bona fide exercise of the power and there was nothing before the Court to doubt the bona fide of the Management Board in delegating the exercise of their competence to a Sub-Committee presided over by the Chairman of

20 the Authority; that the competence was delegated in its entirety to the Sub-Committee while its terms of reference were clearly defined; and that accordingly the recourse must be dismissed.

Application dismissed.

Cases referred to:

- 25 *Avraam v. Ports Authority* (1981) 3 C.L.R. 368;
Barnard v. Natural Dock Labour Port [1953] 1 All E.R. 1113 (C.A.);
Vine v. Natural Dock Labour Port [1956] 3 All E.R. 939 (H.L.);
Osgood v. Nelson [1872] L.R. 5 (H.L.) 636;
- 30 *Ratnagopal v. Attorney-General* [1970] A.C. 974 (P.C.);
Medcon Construction and Others v. Republic (1968) 3 C.L.R. 535 at pp. 542-543.

Recourse.

35 Recourse against the decision of the respondent whereby applicant's licence as a port worker was revoked.

Chr. Pourgourides, for the applicant.

P. Ioannides, for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. The case turns on the interpretation of s.8 of the Cyprus Ports Authority Law*, in the first place, and the validity of a decision of the Management Board of the Cyprus Ports Authority, hereafter referred to as "The Authority"**, whereby they delegated to a sub-Committee their power to inquiry into accusations against the applicant, a licensed port worker, that he had misappropriated funds of the Union of Port Workers, of which he was the treasurer, in the second place.

5

Fusing the two questions into one, what is at issue is the competence of the sub-Committee, in contra-distinction to the Management Board, to exercise the disciplinary powers of the Board and take cognizance of the matter. Other challenges to the validity of the decision of the sub-Committee, raised in the application, revolving round the exercise of their discretionary powers, assuming any such powers vested in them, were abandoned. Examining the record of the proceedings before the sub-Committee, particularly the opportunity afforded to the applicant to put his case before it, I incline to the view the withdrawal of these complaints was justified and are hereby dismissed.

10

15

20

At the end of its deliberations the sub-Committee found the applicant guilty of grave and unpardonable conduct, and decided to revoke his licence as a port worker. The decision was brought to the notice of the Management Board who instructed the General Manager to inform the applicant accordingly. The recourse is directed against the validity of this decision, ill founded in law, in the contention of the applicant, for lack of competence on the part of the sub-Committee, as earlier indicated, to take cognizance of and resolve the matter referred to them. To complete the history of the proceedings, it must be noted that an earlier decision of the Management Board itself, to withdraw the licence of the applicant, was annulled*** for breach of the rules of natural justice. The Court proclaimed, it is a fundamental principle of our law, that proceedings of an essentially disciplinary character, irrespective of the label attached to them, must be conducted in accordance with the

25

30

35

* Law 38/73.

** dated 19.2.1983.

*** See, *Avraam v. Ports Authority* (1981) 3 C.L.R. 368.

rules of natural justice. And every deviation therefrom must be struck down as illegal. Following the annulment of the decision of the Board, they decided, after taking notice of the decision, that the Board should re-examine the matter. Owing
5 to the inability of counsel for the applicant to attend, or the applicant himself, consideration of the matter was adjourned twice. On 19.2.1983 the Management Board delegated authority to a sub-Committee, consisting of the Chairman of the Board and two of its members, to deal with accusations and decide
10 accordingly. The validity of this decision is disputed by reference to the powers of the Management Board, defined in s.8 of Law 38/73, and the nature of the power delegated.

If I can summarise the arguments raised in support of the submission, they may be stated as follows:

- 15 (a) In the absence of express power to delegate disciplinary power or functions, it is impermissible to do so, and, any attempt in that direction must be disowned as illegal.
- 20 (b) The delegation, if permissible by the provisions of s.8, it was ultra vires the law because of failure on the part of the Management Board to define the scope of the authority of the sub-Committee. And
- 25 (c) the decision was, in the event, improper because of failure to specify the reasons for the delegation and explain departure from the original decision of the Board to deal with the matter itself.

Counsel for the applicant went to great lengths in supporting his submissions, referring us to Cyprus, English and Greek
30 authorities; that the fruit of his labour will not feature in this judgment in all its aspects, is no reflection on his commendable effort.

Counsel for the respondents likewise tried to help the Court in every way possible. In his submission, delegation was expressly authorised by s.8 and was validly made, while the powers
35 vested thereby were properly exercised in the context of this case, by assigning authority to a sub-Committee to deal with the matter. Below, I shall examine the rival submissions in the light of the legislation applicable, the relevant principles of administrative law, and, the facts of the case.

There is undoubted power in the Management Board of the Authority to regulate entry and activities within the ports' area*. Counsel are in agreement as to the effect of the law on the subject, and that power vests in the Management Board of the Authority to revoke a porter's licence. There is some 5
disagreement, however, as to the scope of the power to delegate, of no great significance for the purposes of this case. For the applicant it was submitted, the power to delegate is solely regulated by the provisions of s.8, whereas for the respondents 10
it was argued that respondents' power in this regard emanates from and is regulated by the provisions of s.2A—Cap. 184**. To my mind, what is vested in the Management Board of the Authority is the competence of the Director, under s.2A and not the manner of its delegation, although it makes little difference 15
for the outcome of this case for neither provision makes specific reference to delegation of disciplinary functions, upon which submission many of the arguments for the applicant were founded.

I consider it pertinent to make reference to the principles of law relevant to the delegation of a competence, with particular 20
reference to the delegation of the exercise of disciplinary power, a course that will facilitate our deliberations and resolution of the case. It is noteworthy that principles of administrative law, as fashioned in Greece and other continental countries 25
practising administrative law as a separate system of law, and English principles of administrative law, are largely identical***.

- (a) The exercise of disciplinary power or functions and, generally, the exercise of functions of a broadly judicial character cannot be delegated in the absence of express 30
authorisation by the law vesting the competence in a particular body****.

Mr. Pourgourides submitted that the caselaw requires satis-

* See, s.10(2)(d)—Law 38/73, and sections 2 and 2A—Cap. 184, as amended by Law 55/68 and Notification 131, Supplement 3 of the official gazette of 12.5.1977.

** See, Law 55/68.

*** See, *de Smiths—Judicial Review of Administration Action*, 4th ed., p. 298 et seq.; Stassinopoulos—*Law of Administrative Acts*, 1951, p. 190 et seq.

**** See, *Stassinopoulos*, supra, p. 190, 194; *de Smiths*, supra, p. 298 et seq.; *Barnard v. Natural Dock Labour Port* [1953] 1 All E.R. 1113 (C.A.); *Vine v. Natural Duck Labour Port* [1956] 3 All E.R. 939 (H.L.).

faction of one more condition before it is competent for the vestees of disciplinary power to delegate it. He argued that the possibility of delegation of disciplinary functions must be expressly contemplated by the law in the sense that a provision
5 must appear to the effect that delegation of disciplinary functions is permissible. Neither Greek jurisprudence nor English case-law lend support to this proposition. The test is whether the law does empower expressly, or by necessary implication, the vestees of a competence or function to delegate it to another.

10 Delegation of a power must be distinguished from the establishment of a committee to take evidence and generally inquire into the facts and report to the decision-making body*. Such body is not intended to substitute but aid the holder of power to elicit the facts.

15 (b) Statutory provisions enabling an authority entrusted with a competence or function to sub-delegate, must be strictly construed. No delegation can be made except to the extent clearly warranted by law.

20 (c) The act of delegation must be *intra vires* the law; consequently, delegation may be scrutinised with a view to ascertaining the competence delegated and the manner of its exercise. It has been held that the scope and authority of the delegate must be succinctly defined**. Delegation must be solely accomplished
25 by the custodian of the power delegated. Short of that, delegation will be imperfect.

In the above case, delegation was found to be *ultra vires* the law because of failure on the part of the delegating authority to define precisely the terms of reference of the delegate, as
30 well as the scope of his authority.

Once a competence or function is validly delegated, the delegate steps into the shoes and assumes all the powers of the body entrusted by law to exercise the power.

35 For the applicant it was submitted that the disciplinary functions of the Management Board were, in this case, imperfectly delegated because of failure to specify, with precision, the

* See, *Osgood v. Nelson* [1872] LR 5 (H.L.), 636.

** See, *Ratnagopal v. Attorney-General* [1970] A.C. 974 (P.C.).

competence transferred and generally the authority of the sub-Committee. I fail to agree. Mere examination of the sub judice decision of 19.2.1983 clearly establishes the contrary (see exhibit 3). The sub-Committee was entrusted to deal with the complaint and come to a decision. The competence was delegated, in its entirety, to the sub-Committee, while its terms of reference were clearly defined. Hence the submission made on behalf of the applicant in this respect, cannot but be dismissed.

5

Mr. Pourgourides made one more submission bearing on the validity of the decision to delegate. He argued that the reasons for the delegation ought to have been indicated in the decision of the Management Board. In his submission, delegation was an exceptional measure that could be adopted only in the face of special circumstances. For these propositions he relied mostly on the authority of *Medcon Constructions And Others v. The Republic* (1968) 3 C.L.R. 535 at 542-543. In that case, Triantafyllides, J., as he then was, decided that the power of the Minister of Finance, under reg. 41(a) of the Store Regulations, to suspend consideration of a tender by the Tender Board, in order to refer the same to the Council of Ministers, must be—

10

15

20

(a) clearly minuted and,

(b) justified by reference to special circumstances.

In the opinion of the learned Judge, suspension was a measure that could be adopted only in exceptional circumstances.

25

The question in *Medcon* was totally different from the one before us in the instant case. The Court was not there concerned with the exercise of power to delegate but with the exercise of a power to interfere with the process ordained by law. Notwithstanding my initial hesitations, the above case is distinguishable from the present one. Need for a clear record of a decision, on the other hand, was warranted by elementary principles of administrative law, a requisite that was plainly satisfied in this case.

30

Section 8 of Law 38/73 places no constraints on the exercise of the power to delegate. The Management Board has an unfettered discretion in the matter, subject only to the bona fide exercise of the power. And there is nothing before me

35

to doubt the bona fides of the Management Board in delegating the exercise of their competence to a sub-committee presided over by the Chairman of the Authority.

5 For the reasons indicated in this judgment, the recourse is dismissed. Let there be no order as to costs. Order accordingly.

*Recourse dismissed. No order
as to costs.*