1984 December 18

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL PANAYIOTIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondents.

(*Case No.* 519/83).

Jurisdiction—Revisional jurisdiction—May be exercised by one or more judges of the Supreme Court—Upon a case being assigned to a Judge it becomes his duty to try it and the exercise of such jurisdiction is not dependent on any act or decision of the Supreme Court acting in any capacity—Revisional jurisdiction case—Assignment of, to a single Judge—Application for its trial ab initio by the Full Bench of the Supreme Court—Refused—Section 11(2) *of the Administration of Justice (Miscellaneous Provisions) Law,* 1964 (*Law* 33/64).

Administration of Justice (Miscellaneous Provisions) Law, 1964 (*Law* 33/64)—*Revisional jurisdiction—Exercise of—Section* 11(2) *of the Law.*

Words and Phrases—"May" in section 2 *of the Administration of Justice (Miscellaneous Provisions) Law,* 1964 (*Law* 33/64).

Following the raising of a question of constitutionality of the provisions of section 4 of the Public Service Law, 1967 (Law 33/67) by Counsel for the applicant in the above recourse, Counsel for the respondent moved the Court by an application in writing that the case be tried ab initio by the Full Bench of the Supreme Court, instead of a single member of it, and invited the Court to refer his application to the Supreme Court for decision in the matter.

The application turned on the construction of s.11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) which lays down that revisional jurisdiction may be exercised at first instance, by one or more Judges, as the Supreme Court might decide; and in this connection, and after the enactment of Law 33/64, the Supreme Court decided that "any-one member of the Court sitting singly may exercise original or revisional jurisdiction".

Held, that though the word "may" in its ordinary connotation imports discretion, when used in a statute this is not always the case; that where "may" connotes empowerment, it has an obligatory meaning if the empowerment relates to the performance of a judicial function and in that situation, it acquires a meaning analogous to "shall" or "must"; that the word "may" is, in the content of section 11(2) of Law 33/64, employed to signify the power vested in one or more Judges of the Supreme Court to assume revisional jurisdiction at first instance; that it bestows power to administer justice that should be exercised as a matter of public duty upon a verification of the prerequisites for the exercise of the jurisdiction, that is, the initiation of proceedings of revisional jurisdiction, as prescribed by the Rules of Court; that upon a case being assigned to a Judge of this Court it becomes his duty to try it and the law does not make the exercise of such jurisdiction dependent on any act or decision of the Supreme Court acting in any capacity; and that, therefore, this Court does not only have power but is under a duty to try this case; accordingly the application must fail.

Order accordingly.

Cases referred to:

Republic v. *Vassiliades* (1967) 3 C.L.R. 82;

Reg. v. *Tithe Commissioners* [1849] 14 Q.B. 459;

Macdougall v. *Paterson*, 11 C.B. 755;

Re Baker, Nichols v. *Baker*, 44 Ch. D. 262.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Registrar in the Department

of Medical and Health Services in preference and instead of the applicant.

G. Triantafyllides, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

A.S. Angelides, for interested party L. Loizou.

Cur. adv. vult.

PIKIS J. read the following judgment. I am required to determine whether there is discretion in a single Judge of this Court to relinquish jurisdiction in a case he is properly seized of and, if so, the circumstances under which it may be exercised. After the submission of written addresses, counsel for the applicant raised a question of constitutionality of the provisions of s.4 of the Public Service Law*, affecting the numerical composition of the Public Service Commission, previously untouched upon. The issue was raised in writing, in accordance with the directions of the Supreme Court in the case of *Improvement Boad of Eylenja* v. *Andreas Constantinou* (1967) 1 C.L.R. 167. Counsel of the Republic moved the Court by an application in writing that the case be tried ab initio by the Full Bench of the Supreme Court instead of a single Member of it, and invited me to refer his application to the Supreme Court for decision in the matter. Counsel for the applicant and interested party did not oppose the application but did not, as I comprehend their submissions, join in it either, leaving, in their words, the matter in the hands of the Court. I indicated to counsel that a grave issue is at stake, involving the amenity of a Judge to relinquish jurisdiction in the middle of the hearing of a case, and invited further assistance for proper resolution of the question.

Mr. A. S. Angelides for the interested party, cited rule 17 of the Supreme Constitutional Court Rules, as probably of assistance, but did not canvass the issue further. To my mind, r. 17 has no relevance to the solution of the problem under consideration. It deals with an entirely different subject—the power of the Court to make orders and give remedies not formally sought by the parties to the proceedings. Counsel also

* Law 33/67

referred me to the decision in *Makrides* v. *The Republic* (1984) 3 C.L.R. 304, and the importance attached to following a pre-ordained order in the resolution of judicial causes for the fortification of the judicial process. It was there stressed that jurisdiction cannot be relinquished or disclaimed, either for idiosyncratic considerations or for any reasons other than reasons warranting the disqualification of a Judge from passing judgment in a case. The research of Mr. Triantafyllides, counsel for the applicant, did not, as he informed me, bring anything to the fore, of direct assistance, to the issue in hand. His final submission was that this Court may, in its discretion, refer the application for consideration to the Supreme Court. Mr. Charalambous for the respondents, made reference to the practice of the Supreme Court to sanction assumption ab initio of jurisdiction by the Full Bench in matters of exceptional importance on the motion of one or more parties to the dispute. I must confirm this statement is factually correct. On the other hand, no precedent was brought to my notice suggesting the existence of power to relinquish jurisdiction after the commencement of the hearing of a case. The decision of Triantafyllides, P., in *Stokkos* v. *The Republic* (1982) 3 C.L.R. 110, 116, relied upon by Mr. Charalambous, supports that jurisdiction vests in the Supreme Court to adjudicate upon an application for the hearing ab initio of a case by the Full Bench of the Supreme Court. Therefore, the learned Judge adjourned proceedings before him in anticipation of the decision. So far as I am aware, the Supreme Court in that proceeding refused the application for direct hearing of the case by the Full Bench of the Supreme Court. To my comprehension, the competence of a single Judge, if any, to relinquish jurisdiction, turns solely on the interpretation of the provisions of s.11 of the *Courts of Justice (Miscellaneous Provisions) Law* 1964, particularly the provisions of sub-section 2. It expressly lays down that revisional jurisdiction may be exercised at first instance, by one or more Judges, as the Supreme Court might decide, and subject to observance of the pertinent rules of Court. Relevant to the implementation of this part of the law, is the saving by another provision of the law, namely by s.17 of the Supreme Constitutional Court Rules that regulate the exercise of revisional jurisdiction. The Supreme Court, set up under the provisions of Law 33/64, adverted at its first meeting* to the implementation of the

* Held on 6th August, 1964

provisions of s.11, and adopted the following decision in connection therewith.

Under the heading "*Matters Arising out of the Administration of Justice (Miscellaneous Provisions) Law* 1964", it regulated the exercise of appellate jurisdiction under s.11(3) of the Law, and then reached the following decision with regard to the exercise of original and revisional jurisdiction:

> "*Original and Revisional Jurisdiction:* Anyone Member of the Court sitting singly may exercise original or revisional jurisdiction".

The only decision of the Supreme Court, throwing some light on the framework and ambit of s.11, is that of *Republic* v. *Christakis Vassiliades* (1967) 3 C.L.R. 82. It was decided by majority* that appeal from a Judge of the Supreme Court exercising revisional jurisdiction, lies before the Full Bench of the Supreme Court and not a division of three, as provided in sub-section 3 of s.11. The ratio of the decision is this: Inasmuch as the exercise of revisional jurisdiction remains, under the provisions of sub-section 1 of s.11, the responsibility of the Supreme Court, assisgnment of first instance jurisdiction to one Judge, does not sap the Supreme Court, as a body, of jurisdiction, the repository of the jurisdiction formerly exercised in this area by the Supreme Constitutional Court. This case is of direct relevance to determination of the composition of the appellate bench. It does not aim to define, and leaves unresolved the power vested by sub-section 2 in one or more Judges of the Supreme Court to exercise revisional jurisdiction at first instance.

At the core of our problem is the interpretation of the word "δύναται" (may, can) which, on its face, is a permissive and not a compulsory term. In Greek, as well as English, the word "may", in its ordinary connotation, imports discretion. However, when used in a statute, this is not always the case. A lot depends on the context and the nature of the authority that the legislature purports to confer by the employment of the word "may". There is a long line of cases establishing that where "may" connotes empowerment, it has an obligatory

* *Josephides, J.*, dissenting.

meaning if the empowerment relates to the performance of a judicial function. In that situation, it acquires a meaning analogous to "shall" or "must". Judicial approach to the subject is reflected in the following passage from the judgment of *Coleridge, J.*, in *Reg.* v. *Tithe Commissioners* [1849] 14 Q.B. 459:

> "When a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorized, to exercise the authority when the case arises, and its exercise is duly applied for by a party interested, and having the right to make the application. For these reasons we are of opinion that the word 'may' is not used to give a discretion, but to confer a power upon the Court and judges; and that the exercise of such power depends, not upon the discretion of the Court or judge, but upon the proof of the particular case out of which such power arises".

This passage was expressly approved by *Jervis, C.J.*, in *Macdougall* v. *Paterson*, 11 C.B. 755. Elsewhere, in the judgment in *Tithe Commissioners*, it is explained that 'may' has a compulsory meaning whenever it confers a power to be exercised for "the public benefit or in advancement of public justice", a point made with equal eloquence by *Cotton, L.J.*, in *Re Baker, Nichols* v. *Baker*, 44 Ch. D. 262. The word "δύναται" is, in the context of s.11 sub-section 2, employed to signify the power vested in one or more Judges of the Supreme Court to assume revisional jurisdiction at first instance. It bestows power to administer justice that should, in accordance with the principles enunciated in the above cases, be exercised as a matter of public duty upon a verification of the prerequisites for the exercise of the jurisdiction, that is, the initiation of proceedings of revisional jurisdiction, as prescribed by the Rules of Court. The number of Judges who may exercise jurisdiction at first instance, is reserved for the Supreme Court. In exercise of this rule-making power the Supreme Court directed, as indicated above, at its first meeting, that jurisdiction at first instance may be exercised by one Judge of the Supreme Court. "May", in this context, has a like meaning as in the law itself. It denotes the power of a single Judge to exercise revisional jurisdiction. Upon a case being assigned to him, it becomes his duty to try it. The law does not make the exercise of such jurisdiction

dependent on any act or decision of the Supreme Court acting in any capacity.

The interpretation accorded above to s.11 sub-section 2, not only it is dictated by the wording of the law, but is also consonant with the express object of the legislature to establish a two-tier system for the review of administrative action.

As a matter of the policy of the law, it is highly desirable there should be certainty in the judicial process—an important attribute of the rule of the law. The administration of justice should follow a signposted route, and not a course uncertain. The role of the Supreme Court as the final arbiters of the exercise of revisional jurisdiction, is duly safeguarded by vesting in the Full Bench appellate jurisdiction over decisions of a single Judge. That jurisdiction is in no way minimised by the exercise of revisional jurisdiction at first instance by a single Judge of the Supreme Court.

Attention must also be drawn to the provisions of the provisos to Article 155.2 of the Constitution which established that original jurisdiction formerly exercised by a single member of the Court was subject to appeal before the High Court, a fact noticed in the case of *Vassiliades*, supra, as consequential for the interpretation of the provisions of s.11 of Law 33/64. We can fairly presume the legislature, in enacting s.11 of Law 33/64, legislated within the framework of the Constitution, and intended to avoid any inconsistency with the provisions of the provisos to para. 2 of Article 155. The exercise of revisional and original jurisdiction of the Supreme Court at first instance, under s.11(2), is subject to the same provisions. Therefore, it can be argued that if revisional jurisdiction could be exercised at first instance by the Full Bench, it would be equally feasible for the Supreme Court, by the same process of reasoning, to exercise original jurisdiction at first instance. That could not have been, it seems to me, the intention of the legislature.

Whether, under any circumstances, the Supreme Court can, before assignment of a case to a Judge for trial, judicially decide to assume directly jurisdiction to review an act or decision under Article 146.1, as ultimate vestees of the jurisdiction formerly exercised by the Supreme Constitutional Court—doubt-

ful though it may appear to be on the analysis made in this judgment—is not a matter I am required to decide in this case and shall, therefore, refrain from expressing a concluded opinion.

For the reasons explained, I not only have power but I am under a duty to try the case. This duty I propose to discharge by hearing the case to its conclusion.

Order accordingly.