

1985 April 22

[LORIS, J.]

IN THE MATTER OF AN APPLICATION BY

1. THEOCHARIS PERICLEOUS,

2. ANNA PERICLEOUS AND

3. VRYONIS SOFOCLEOUS

FOR LEAVE TO APPLY FOR ORDERS OF
PROHIBITION AND CERTIORARI.*(Civil Application No. 18/85).*

Jurisdiction—Arbitration proceedings under section 53 of the Co-operative Societies Law, Cap. 114—Quasi judicial—Court, at least prima facie, vested with jurisdiction under Article 155.4 of the Constitution to issue orders of certiorari and prohibition in relation to.

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Co-operative Societies Law, Cap. 114—Section 53 not contrary to Articles 28, 30 and 152 of the Constitution—Dismissal of Secretary of Co-operative Grocery—Unauthorised withdrawal by him from the Provident Fund of amounts standing to his credit—Claim of the Co-operative Grocery against him a dispute within the meaning of the said section 53 and can be referred to arbitration.

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Applicant 1 was at all material times a member and the Secretary of the Co-operative Grocery of Pissouri Ltd., a Co-operative Society registered under the provisions of the Co-operative Societies Law, Cap. 114. Applicants 2 and 3 were his guarantors for the faithful performance of his duties. As an employee of the said Grocery applicant 1 was contributing to the Provident Fund of the employees. On being dismissed from the service of the said Grocery he withdrew from the Provident Fund, which was entrusted to him as secretary, the amounts standing to his credit under the Provident Fund in question without the knowledge or the consent of his employers. The Registrar of the Greek Co-operative Societies having considered the aforesaid withdrawal as unlawful proceeded to refer the dispute to an arbitrator, pursuant to the provisions of section 53(2)(b) of Cap. 114. Hence

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applicant filed an application for leave to file an application for an order of prohibition preventing the arbitrator to act and for an order of certiorari quashing the relevant arbitration proceedings.

5 Counsel for the applicants contended.

10 (a) That the withdrawal of the money from the Provident Fund was a matter purely connected with the Provident Fund as such, and therefore the dispute was falling entirely within the competence of the Industrial Disputes Tribunal, as envisaged by the provisions of s. 23(3) of the Provident Funds Law, 1981 (Law No. 44/81).

15 (b) That even if the dispute were envisaged by s. 53 of the Co-operative Societies Law, Cap. 114, the said section 53 of Cap. 114 was unconstitutional as offending Articles 28, 30 and 152 of the Constitution.

20 *After concluding that at least prima facie it possesses jurisdiction, under Article 155.4 of the Constitution, to issue the orders of certiorari and prohibition applied for, the Court*

25 *Held*, (1) that section 53 of Cap. 114 was not contrary to, or inconsistent with, Article 152 of the Constitution because a general provision such as Article 152.1 which concerned the exercise of the judicial power, *stricto sensu*, ordinarily exercised by Courts of Law proper, could not reasonably be treated, viewed in the judicial system of Cyprus, as having been intended to exclude the determination of disputes by arbitration.

30 (2) That section 53 was not contrary to, or inconsistent with Article 30 of the Constitution because everybody being presumed to know the Law and being free to join or to accept office in, or employment with, a society, a legal relationship including as one of its conditions the determination of disputes as provided under s. 53 comes into existence and thus the rights under Article 30 are waived in that respect, and because the form of arbitration provided in s. 53 was limited only to disputes concerning the internal administration of Co-operative Societies.

(3) That section 53 was not contrary to, or inconsistent with Article 28 because whatever differentiation or distinction was made between disputes to which s. 53 was applicable, and other civil disputes in general, it was based not on arbitrary grounds but on reasonable grounds connected with the special nature and functions of Co-operative Societies. 5

(4) That the unauthorised withdrawal by applicant No. 1 of the said amount gave rise to the claim raised by the Co-operative Grocery against him; that such a claim is a dispute touching the business of the Co-operative Grocery within the meaning of section 53 of Cap. 114; and applicants 2 and 3 who have signed as guarantors of applicant No. 1 found thus themselves involved in a dispute within the ambit of s. 53 of Cap. 114; accordingly the application must fail. 10 15

Application dismissed.

Cases referred to:

- Ramadan v. Electricity Authority of Cyprus*, 1 R.S.C.C. 49;
- Ex parte Maroulletti* (1972) 1 C.L.R. 75; 20
- Zenios and Another v. Disciplinary Board* (1978) 1 C.L.R. 382;
- Vassiliou and Another v. Disciplinary Committee* (1979) 1 C.L.R. 46;
- Co-operative Grocery of Vasilias v. Ppirou and Others*, 4 R.S.C.C. 12; 25
- Shefik v. First Limassol Co-operative Savings Bank Ltd.*, 19 C.L.R. 244;
- Zenonos and Others v. Mylonas and Others*, 19 C.L.R. 259; 30
- Mikrommatis v. Republic*, 2 R.S.C.C. 125 at p. 131.

Application.

Application for leave to apply for an order of prohibition preventing the arbitrator to act and for an order of certiorari quashing the arbitration proceedings referred 35

to him by the Registrar of Co-operative Societies pursuant to the provisions of s. 53(2)(b) of Cap. 114.

P. Ioannides, for the applicant.

Cur. adv. vult.

5 LORIS J. read the following judgment. The ex-parte applicants in the present application seek leave to file an application for an order of prohibition preventing the arbitrator (namely Georghios Charalambides an advocate of Limassol to whom the present dispute was referred by
10 the Registrar of the Co-operative Societies pursuant to the provisions of s. 53(2)(b) of Cap. 114) to act and for an order of certiorari quashing the relevant arbitration proceedings.

The facts relied upon are very briefly as follows:

15 Applicant No. 1 who was appointed several years ago and in any way prior to 1981, as employee and/or secretary of the Co-operative Grocery of Pissouri Ltd., a Co-operative society registered under the provision of Cap. 114; applicants 2 and 3 signed relevant documents as guarantors
20 of applicant No. 1, for the faithful performance by the latter of his duties in the said Co-operative Grocery.

As an employee and or secretary of the aforesaid Co-operative grocery applicant No. 1 was contributing to the Provident Fund of the employees of the said Co-operative
25 Grocery; such provident fund was registered in 1983 pursuant to the provisions of s. 6 of the Provident Funds Law, 1981 (Law 44/81).

The applicant who was continuously contributing to the said fund up to the date of his dismissal by the Co-operative Grocery of Pissouri, which occurred at some
30 time during October 1984, withdrew from the said Fund the amounts standing to his credit under the provident fund in question.

I shall have the opportunity of referring later on in the present ruling to the circumstances under which the said
35 amount was withdrawn. Sufficing to say at this stage that the Registrar of the Greek Co-operative Societies consi-

dered the aforesaid withdrawal from the Provident Fund as unlawful and proceeded to refer the dispute to the arbitrator, pursuant to the provisions of s. 53(2)(b) of the Co-operative Societies Law, Cap. 114. It may be mentioned here that claims by a Registered Co-operative Society against a member or a past member thereof (in this case the persons who have signed as guarantors are standing on the same footing) are referred to arbitration as provided by s. 53. 5

It is apparent from the application and the relevant affidavit in support thereof, and the documents attached thereto, as well as from the submission of learned counsel appearing for the ex-parte applicants that arbitration proceedings were commenced, ex-parte applicant No. 1 in the present application appeared before the arbitrator appointed by the Registrar of the Co-operative Societies, a statement of claim has already been directed to be filed and has already been filed and the hearing of this arbitration was fixed on the 28th of April, 1985. 10 15

What is sought by means of the present application is leave to issue writs of prohibition and certiorari preventing the arbitrator to act and quashing all arbitration proceedings. 20

The argument advanced by learned counsel for the ex-parte applicants was twofold: 25

(a) The withdrawal of the money from the Provident Fund, it was submitted, is a matter purely connected with the Provident Fund as such, therefore the dispute was falling entirely within the competence of the Industrial Disputes Tribunal, as envisaged by the provisions of s. 23(3) of the Provident Funds Law, 1981 (Law No. 44/81). 30

(b) Even if the dispute were envisaged by s. 53 of the Co-operative Societies Law, Cap. 114, the aforementioned s. 53 of Cap. 114 is unconstitutional, it was maintained, as offending Articles 28, 30 and 152 of the Constitution. 35

The power of this Court to issue orders of Certiorari and Prohibition, emanates from the provisions of Article

155.4 of our Constitution which reads as follows:

5 “155.4. The High Court shall have exclusive jurisdiction to issue orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari.”

10 “The jurisdiction of the Supreme Court under Article 155.4 is exclusive of the jurisdiction specifically entrusted to the Supreme Constitutional Court, and now to the Supreme Court in virtue of Law 33/64, under Article 146.”

(vide *Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256 at p. 259).

15 The above principle was laid down by the then Supreme Constitutional Court as early as 1961 in the case of *Hussein Ramadan v. Electricity Authority of Cyprus and another*, 1 R.S.C.C. 49.

20 In deciding the present application at this stage I have to take into consideration (a) the question of the jurisdiction of this Court and (b) whether on the face of the applicant's statement and the affidavit in support I am satisfied that such leave should be granted. (*Ex-parte Marouletti* (1972) 1 C.L.R. 75).

25 As regards the question of jurisdiction, in view of the decision in the case of *Zenios & Another v. Disciplinary Board* (1978) 1 C.L.R. 382, I do not intend to indulge deeply into the merits of the case. I consider arbitration proceedings, as quasi judicial and I am satisfied “at least prima facie, that under the circumstances I possess jurisdiction under Article 155.4 of the Constitution to issue the orders of certiorari and prohibition which are applied for by the applicants” (vide *Vassiliou & Another v. Disciplinary Committee* (1979) 1 C.L.R. 46).

35 The issue which now remains for determination is whether on the face of applicants' statement and the affidavit in support this Court should be satisfied that such leave should be granted.

Although I shall not go deeply into the merits of the

case I consider myself duty bound to examine at this stage (i) the question of the alleged unconstitutionality of s. 53 of the Co-operative Societies Law, Cap. 114 and then (ii) proceed to determine whether this is a dispute envisaged by s. 53 of Cap. 114 or whether it is a dispute under the Provident Funds Law and falls exclusively therefore within the jurisdiction of the Industrial Disputes Tribunal as envisaged by s. 23(3) of Law 44/81.

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As regards the question of unconstitutionality my task becomes very easy because the exact point has been decided by the then Supreme Constitutional Court in the case of the *Co-operative Grocery of Vassilia v. Ppirou and others*, 4 R.S.C.C. 12, where it was held that (a) s. 53 was not contrary to, or inconsistent with, Art. 152 because a general provision such as Art. 152.1 which concerned the exercise of the judicial power, *stricto sensu*, ordinarily exercised by Courts of law proper, could not reasonably be treated, viewed in the judicial system of Cyprus, as having been intended to exclude the determination of disputes by arbitration;

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(b) s. 53 was not contrary to, or inconsistent with Art. 30 because-

(i) everybody being presumed to know the law and being free to join or to accept office in, or employment with, a society, a legal relationship including as one of its conditions the determination of disputes as provided under s. 53 comes into existence and thus the rights under Art. 30 are waived in that respect, and

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(ii) the form of arbitration provided in s. 53 was limited only to disputes concerning the internal administration of Co-operative Societies, (*vide Hussein Shefik v. The First Limassol Co-operative Savings Bank, Ltd.*, 19 C.L.R. p. 244, and *Eleni Zenonos & others v. Michael Mylonas & others*, 19 C.L.R. p. 259).

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(c) s. 53 was not contrary to, or inconsistent with Art. 28 because whatever differentiation or distinction was made between disputes to which s. 53 was applicable, and other civil disputes in general, it was based not on arbi-

trary grounds but on reasonable grounds connected with the special nature and functions of Co-operative Societies (*Argiris Mikrommatis v. The Republic*, 2 R.S.C.C. 125 at p. 131 letter F.).

5 The crucial issue now, is whether the present dispute is a dispute within the ambit of s. 53 of Cap. 114; in order to decide this issue the facts of this case have to be examined. The facts appearing on record as supplemented at the hearing before me are shortly as follows:

10 Applicant No. 1 was at all material times a member and the Secretary of the Co-operative Grocery in question; on being dismissed he withdrew from the Provident Fund, which was entrusted to him as Secretary, the amount in question, without the knowledge or at least the consent of
15 his employers or the other members of the Administrative Committee of the Fund.

This unauthorised withdrawal by applicant No. 1 gave rise to the claim raised by the Co-operative Grocery against him. I hold the view that such a claim is a dispute touch-
20 ing the business of the Co-operative Grocery within the meaning of section 53 of Cap. 114; and applicants 2 and 3 who have signed as guarantors of applicant No. 1 found thus themselves involved in a dispute within the ambit of s. 53 of Cap. 114.

25 And it is immaterial whether the amount in question was standing to the credit of applicant No. 1 in account B of the provident fund; even in this respect it must be borne in mind that according to paragraph 10(n) of ex. "Γ" a member of the Provident Fund when dismissed will
30 not have a right to recover any amount from the Provident Fund under Account B."

Under the circumstances I am not satisfied that leave for filing applications for the issue of orders of Prohibition and Certiorari should be granted to the applicants in
35 the present proceedings who will not anyway remain remediless (even if the totality of the facts when properly presented might tend to take the dispute outside the ambit of s. 53 of Cap. 114) in view of the provisions of s. 53

(7) of Cap. 114 which enables the Registrar in proceedings under s. 53 "to refer any question of law... for the opinion of the Supreme Court."

For all the above reasons leave is refused. Order accordingly.

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Application dismissed.