

1985 January 17

[MALACHTOS, DEMETRIADES, SAVVIDES, LORIS, PIKIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Appellant,*

v.

YIANNIS SAFIRIDES,

*Respondent.*

*(Revisional Jurisdiction Appeal*

*No. 332).*

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5 *Public Officers—Appointments and promotions—Annulment of,*  
*by the Supreme Court—Reconsideration of the matter by*  
*the Commission, under a different composition from the*  
*one which took the original decision—New Commission not*  
*interviewing the candidates but taking into account their*  
*performance at the original interview—Impressions formed*  
*at interview not facts but only constitute the subjective*  
*evaluation of the members of the Commission—Course*  
10 *adopted not open to the Commission because it was in-*  
*compatible with the requirements of the correct functioning*  
*of a collective organ and good administration generally*  
*—Sub judice decision annulled—Moreover sub judice deci-*  
*sion liable to be set aside because of abdication or aliena-*  
15 *tion of the Commission's discretionary powers—Article*  
*146(4)(b) and (5) of the Constitution.*

20 Upon a recourse by the respondent the Supreme Court on 14.3.1980 annulled the decision of the Public Service Commission, which was taken, on 22.9.1977 and by means of which the interested party was appointed to the post of Occupational Therapist.

On 12.8.80 the P.S.C. re-examined the filling of the aforesaid post and decided again to promote the interested party Costas Koukkouris in preference to the applicant-respondent. It was common ground that the Public Service

Commission which re-examined the filling of the said post and reached the sub judice decision on 12.8.80 was differently constituted from the P.S.C. which had initially decided on 22.9.77 to effect the subsequently annulled promotion of the interested party to the post in question. It was also an undisputed fact that the P.S.C. reached its decision on 12.8.80 without interviewing the candidates afresh; instead they relied on the impressions regarding the candidates formed and recorded by the Public Service Commission at the interview held on 22.9.77.

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*On the sole issue whether it was permissible for the P.S.C. as composed on 12.8.80 (the time of the sub judice decision) to use as one of the criteria for selecting the interested party, the impressions regarding the candidates formed at interviews of the candidates held on 22.9.1977 and recorded in the minutes, by the then Public Service Commission, a Commission of different composition:*

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*Held, (1) Per Loris J. that impressions formed by a collective organ at interviews of candidates do not constitute "facts"; that they constitute the subjective evaluation "connected with the persons of which the collective organ concerned is composed at the material time"; that such material cannot be used, some three years later, by a differently constituted organ which is expected to exercise its own discretion for the selection of the most suitable candidate for appointment or promotion; that as a consequence of the course adopted by the respondent P.S.C. on 12.8.80 which was not open to it, being incompatible with the requirements of the correct functioning of a collective organ and good administration generally, the whole process of selecting for promotion the interested party was vitiated by a material irregularity and should therefore be annulled.*

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*Per Pikis J. that it appears to be a misnomer to refer to impressions gained by members of the Public Service Commission from the performance of candidates at an interview as facts before the Public Service Commission; that, in reality, they are findings of fact recording a subjective evalua-*

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tion of members of the Commission in exercise of their discretionary powers; that with the annulment of the first decision, not only the decision itself but the reasons founding it were swept aside; that where a decision is declared wholly invalid under Article 146.4(b), the decision, as well as the premises upon which it is based, disappear; that thereupon the administration comes under a duty to restore the status quo ante and examine the matter afresh by reference to the factual and legal background prevailing prior to the decision; that every authority is under a duty, in accordance with Article 146.5, to heed and give effect to the decision by erasing every aspect to the impugned act; that, therefore, the Public Service Commission rested their decision on material that was not properly before them and as such it was liable to be set aside as founded on inadmissible facts; that, moreover, it was liable to be set aside for another reason as well, abdication or alienation of their discretionary powers; because in effect they relied for their decision on the subjective evaluations of persons other than themselves, defaulting thereby in the discharge of their duty to address personally their minds to the facts and come to a decision, a sine qua non for a valid exercise of discretionary powers.

*Appeal dismissed.*

Cases referred to:

- 30 *Zafirides v. Republic* (1980) 3 C.L.R. 140;  
*Kyprianides v. Republic* (1968) 3 C.L.R. 628;  
*Ioannides and Another v. Republic* (1979) 3 C.L.R. 628;  
*Gava v. Republic* (1984) 3 C.L.R. 1391.

**Appeal.**

- 35 Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 18th June, 1983 (Revisional Jurisdiction Case No. 445/80\*)

\* Reported in (1983) 3 C.L.R. 783

whereby the promotion of the interested party to the post of Occupational Therapist (Psychiatric) was annulled.

*N. Charalambous*, Senior Counsel of the Republic, for the appellant.

*M. Christofides*, for the respondent.

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*L. Hadji Demetris*, for the interested party.

*Cur. adv. vult.*

MALACHTOS J.: During the break we held consultations about the legal point raised in this appeal; we are unanimously of the opinion that the appeal should be dismissed. Consequently we shall not call upon Mr. Christofides to address the Court.

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The reasons for judgment will be given by Mr. Justice Loris and Mr. Justice Pikis.

LORIS J.: The present appeal raises a single point for consideration; whether it was permissible for the Public Service Commission as composed on 12.8.80 (the time of the sub judge decision) to use as one of the criteria for selecting the interested party, the impressions regarding the candidates formed at interviews of the candidates held on 22.9.1977 and recorded in the minutes, by the then Public Service Commission, a Commission of different composition.

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The undisputed facts are very briefly as follows:

On 22.9.77 the Public Service Commission, as then composed, interviewed candidates with a view to effecting an appointment to the post of Occupational Therapist (Psychiatric); the post in question is a first entry and promotion post.

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On the same day, after the interview, the P.S.C. relying inter alia, on the performance of the candidates, (amongst whom were the applicant-respondent and the interested party in the present appeal) during the interview, arrived at its decision by virtue of which the interested party namely Costas Koukkouris was promoted to the said post in preference to and instead of the applicant.

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It may as well be added here that the P.S.C. recorded in its minutes then its impressions as to the performance of the candidates during the interview in connection with their personality, alertness of mind, general intelligence and the correctness of their answers to questions put to them by the Commission.

The respondent in the present proceedings feeling aggrieved, impugned by means of a recourse the aforesaid decision of the P.S.C. dated 22.9.77 and succeeded in annulling same on 14.3.80 (vide *Zafirides v. The Republic* (1980) 3 C.L.R. 140).

On 12.8.80 the appellant P.S.C. re-examined the filling of the aforesaid post and decided again to promote the interested party Costas Koukkouris in preference to the applicant-respondent.

It is common ground that the Public Service Commission which re-examined the filling of the said post and reached the sub judice decision on 12.8.80 was differently constituted from the P.S.C. which had initially decided on 22.9.77 to effect the subsequently annulled promotion of the interested party to the post in question.

It is also an undisputed fact that the P.S.C. reached its decision on 12.8.80 without interviewing candidates afresh; instead they relied on the impressions regarding the candidates formed and recorded by the Public Service Commission at the interview held on 22.9.77.

The respondent in the present appeal attacked the decision of the P.S.C. dated 12.8.80 by means of recourse No. 445/80 which resulted in the annulment of the decision of the P.S.C. (vide *Safirides v. The Republic* (1983) 3 C.L.R. 763).

The present appeal, which was filed by the Public Service Commission, is directed against the judgment of the learned President of this Court who tried the recourse (No. 445/80) in the first instance, and raises three grounds of Law set out in the appeal which in the submission of learned counsel of the appellant boil down to a single ground notably whether it was open to the P.S.C. as composed at the time of the sub judice decision

to use as one of the material criteria for selecting the interested party, the impressions regarding the candidates formed at an interview of the candidates by a differently constituted P.S.C. on 22.9.1977 which has recorded its said impressions then in the relevant minutes. 5

Learned counsel for the appellant submitted that the impressions formed and recorded by the former P.S.C. on 22.9.77 constituted 'facts' which could be relied upon by the latter P.S.C. on 12.8.80 in the same way as all other material facts which appear in the administrative files. 10

With respect, we find ourselves unable to agree with the submissions of learned counsel for appellant. We hold the view that impressions formed by a collective organ at interviews of candidates do not constitute "facts"; they constitute the subjective evaluation "connected with the persons of which the collective organ concerned is composed at the material time" as the learned President of this Court observed; and such material cannot be used, some three years later, by a differently constituted organ which is expected to exercise its own discretion for the selection of the most suitable candidate for appointment or promotion. 15 20

We are in full agreement with the learned President of this Court, that as a consequence of the course adopted by the respondent P.S.C. on 12.8.80 which was not open to it, being incompatible with the requirements of the correct functioning of a collective organ and good administration generally, the whole process of selecting for promotion the interested party was vitiated by a material irregularity and should therefore be annulled. 25 30

For the reasons given herein above and those about to be explained by my brother Judge Pikis, the appeal fails.

In the circumstances we shall not make any order as to the costs thereof.

PIKIS J.: A single question is at issue, the amenity of a collective organ—the Public Service Commission in this case—to take into consideration, on re-examination of an appointment to the Public Service, the impressions formed 35

by members of the Public Service Commission under a different composition, of the performance of candidates competing for appointment at an interview that preceded the annulled decision. The facts, lucidly recited by LORIS, J., establish that the Public Service Commission, in choosing the interested party relied, inter alia, on the assessment made by their predecessors of the performance of the candidates at an interview. For the appellant, it was submitted, these impressions constituted a fact like any other fact before the Public Service Commission, and had to be evaluated alongside with other facts extant before the Commission at the time of the annulled act. This, he submitted, was a necessary exercise for the restoration of the factual state of affairs obtaining before the Commission at the time their predecessors made their choice, an argument that found no favour whatever with the trial Court. The learned Judge, in the judgment now under appeal, ordered the annulment of the sub judice decision on the ground that it rested on a subjective evaluation of members of the Public Service Commission on the first occasion, an assessment that could not bind their successors, the present members of the Public Service Commission, dutybound, as they were, to bring their own mind to bear on the suitability of different candidates for promotion.

In argument I pointed out to counsel for the Republic that facts resting on the impressions of members of the Public Service Commission are not at par with facts placed before them. A distinction must be made between the two for, in the first case, we are concerned with material placed before the Commission, while, in the second, with findings made by the Commission itself, subjective in that they reflect the personal reactions of members of the Commission and, because of that have no objective foundation. It appears to me to be a misnomer to refer to impressions gained by members of the Public Service Commission from the performance of candidates at an interview as facts before the Public Service Commission. In reality, they are findings of fact recording a subjective evaluation of members of the Commission in exercise of their discretionary powers. This evaluation founded in part the decision annulled, and constituted a reason for arriving at it, a concomitant of the decision itself.

With the annulment of the first decision<sup>1</sup>, not only the decision itself but the reasons founding it were swept aside. This is necessarily the result of a decision of a Court of competent jurisdiction annulling an administrative act. Where a decision is declared wholly invalid under Article 146.4 (b), the decision, as well as the premises upon which it is based, disappear. Thereupon the administration comes under a duty to restore the status quo ante and examine the matter afresh by reference to the factual and legal background prevailing prior to the decision. Every authority is under a duty, in accordance with Article 146.5, to heed and give effect to the decision by erasing every aspect of the impugned act<sup>2</sup>. 5 10

It emerges that the Public Service Commission rested their decision on material that was not properly before them. And as such it was liable to be set aside as founded on inadmissible facts. Moreover, it was liable to be set aside for another reasons as well, abdication or alienation of their discretionary powers. In effect, they relied for their decision on the subjective evaluations of persons other than themselves, defaulting thereby in the discharge of their duty to address personally their minds to the facts and come to a decision, a sine qua non for a valid exercise of discretionary powers. 15 20

Inevitably, the appeal must be dismissed and in agreement with my Brethren, I order accordingly. 25

MALACHTOS J.: As already indicated and for the reasons given in the judgment just delivered the appeal is dismissed.

Let there be no order as to costs. 30

*Appeal dismissed with  
no order as to costs.*

<sup>1</sup> Safirides v. Republic (1980) 3 C.L.R. 140;

<sup>2</sup> See, inter alia, Pantelakis Z. Kyprianides v. Republic (1988) 3 C.L.R. 653; Ioannides and Another v. The Republic (1979) 3 C.L.R. 628; Gava v. The Republic, decided on 30.11.84, unreported as yet.