

1987 March 10

[A. LOIZOU, MALACHTOS, LORIS, PIKIS, KOURRIS, JJ.]

THE PUBLIC SERVICE COMMISSION (NO.2),

Appellant - Respondent,

v.

MARINA POTOUDES AND OTHERS,

Respondents - Applicants.

(Revisional Jurisdiction Appeal No. 680).

Natural Justice — Right to be heard — Revisional Jurisdiction Appeal — Lack of service of recourse on interested parties — Effect.

Revisional Jurisdiction Appeal — Lack of service of the recourse on interested parties — Effect.

The sixteen interested parties in recourse 106/84 and 113/84, which had not been served on them, were the same as the interested parties in another recourse, which had been served and resulted in the judgment appealed from by Revisional Jurisdiction Appeal 680. All the aforesaid recourses impugned the same administrative act. 5

Recourse 96/84, which related to vacancies for French speaking officers and in which there are four interested parties, different from the said sixteen interested parties in the aforesaid two recourses, was not served on such interested parties. 10

Held, (1) As in the cases where judgment was delivered, subject of Revisional Appeal 680, there has been effected service, the lack of service in the other recourses cannot affect the outcome of the appeal. 15

(2) As regards recourses 106/84 and 113/84 there is no need to delve any more into them. Indeed, if the appeal succeeds, there will be an opportunity to effect service, whereas, if the appeal fails and the annulment is confirmed, they will suffer no detriment. 20

(3) The position is different as regards recourse 96/84. The omission constitutes a material violation of the rules of natural justice and, therefore, the judgment delivered in this recourse must be set aside.

Order accordingly.

Cases referred to:
Danos v. The Republic (1985) 3 C.L.R. 2062, and on appeal (1986) 3 C.L.R. 1806. 25

Preliminary point.

Preliminary point as to the effect of lack of service on certain of the interested parties in some of the recourses which had been heard together with the rest and resulted in the judgment under
5 appeal.

A. Vladimerou, for the appellant.

A. Angelides, A. Ladas, N. Papaefstathiou, for the respondents.

L. Papaphilippou, for the interested parties.

10 A. LOIZOU J.: We have already given our ruling on the preliminary point whether at this stage and without being one of the grounds of appeal this Court could examine the question whether the required service of the recourse of the interested parties, named therein, or some of them, was effected. We shall therefore proceed to rule on the merits of the issue after the
15 ascertainment of the extent of the nonservice of the recourse on the interested parties.

(Hearing resumed).

20 A. LOIZOU J.: After perusal of the relevant files, it has been ascertained that in recourse No. 96/84 which relates to the vacancies for French speaking officers and in which there are four interested parties no service was effected nor reference is made to such service in the affidavits of service filed in any other recourse heard together with it. Furthermore there does not appear also
25 service to have been effected in recourses numbers 106/84 and 113/84, which challenge the validity of the same administrative act and relate to the same sixteen interested parties. It appears, however, that these two recourses were filed subsequently to the filing of the other ones and when the process for the first ones had already gone on its way, yet, as they were relating to the same sub
30 justice act challenged by the rest, they were tried together with them and judgment was delivered in respect of all. This judgment is the subject of the present appeal.

35 The examination of the affidavits of service has revealed to our satisfaction that in the cases where judgment was delivered, subject matter of Revisional Appeal 680, there has been effected service and as a result this ground which it undermines and interferes with the administration of justice because it deprives a

litigant of the opportunity to be heard, cannot succeed. If any authority is needed reference may be made to the judgment of the Full Bench of this Court in the case of *Yiannakis Danos v. The Republic*, Revisional Appeal 527, delivered on the 13th November, 1985, not yet reported*, which has set out the principles that govern the subject. Reference may also be made to the first instance judgment reported under the same title in (1985) 3 C.L.R. 2062 which was confirmed on appeal. 5

As, however, no practical result will emerge in the instance of recourses 106/84 and 113/84, we shall not delve any more into them at this stage and differ our ruling as *if the appeal succeeds*, then in so far as those interested parties are concerned an opportunity will be available to have the recourses served on the said interested parties and if the result goes the other way they will suffer no detriment whatsoever once the annulment of the administrative act will be confirmed. That, however, which we cannot ignore for any reason, is the instance of recourse number 96/84 in which as we already said there has not been effected service on the four interested parties named therein which are different than the sixteen interested parties of the other recourses and which are on an entirely different footing. This omission constitutes a material violation of the rules of natural justice and as such a ground of nullity and not one of mere irregularity, we have come to the conclusion that the judgment delivered in respect of this recourse must be and is hereby set aside. 10
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The recourse will have to be served on the said interested parties in the prescribed manner and be heard de novo but as regards its hearing a direction will be made in due course.

We shall now proceed to hear Revisional Appeal 680.

Order accordingly. 30

* Now reported in (1986) 3 C.L.R. 1806.