

1987 November 14

[STYLIANIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIS L. PANAYIS,

Applicant,

v

THE PORTS AUTHORITY OF CYPRUS,

Respondents

(Case No. 451/86).

Evidence — Admissibility of, in proceedings under Art 146 of the Constitution — Principles applicable — Review of case law

5 The question in this case concerns the admissibility of evidence, which the respondents sought to adduce, to the effect that the personal files and the files of the confidential reports of the applicant and the interested party were before the respondents and were taken into consideration by them in reaching the sub judge decision of the promotion of the interested party

10 The relevant record of the respondent reads as follows «The Board - (a) After having taken into consideration all the factors at its disposal decided to offer promotion »

Held, (1) The proceedings in a recourse for annulment are regulated by the Rules of the Supreme Constitutional Court, 1962. The Court has wide power to receive evidence on any point or matter which the Court might consider necessary for the proper determination of the recourse

15 The rules of Evidence applicable in civil proceedings are relaxed in the Revisional Court in view of the material difference between the two jurisdictions

20 Evidence which is relevant to the issues raised and tends to complete the picture by placing before the Court all the relevant material on the basis of which the appointing Authority has reached its sub judge decision is admissible. Such evidence must come from official source.

(2) In the light of the relevant record of the respondents the evidence sought to be adduced falls squarely within the ambit of the principle of admission of evidence to complete the picture of the administrative process and emanates from official source of the organ that took the sub judice decision

Directions accordingly 5

Cases referred to:

Kynakides v The Republic. 1 R S C C 66

Theodossiou v The Republic. 2 R S C.C 44

Papapetrou v. The Republic. 2 R S C C 61.

Saruhan v. The Republic, 2 R.S.C.C 133; 10

Georghiades (No 2) v. The Republic (1965) 3 C L R 473;

Georghiades and Another v The Republic. (1966) 3 C.L.R 827.

Arkatitis and Others (No 1) v. The Republic, (1967) 3 C L R 29;

Christou v. The Republic (1969) 3 C L R. 134.

Frangos v The Republic (1969) 3 C L R 312 15

Michael (No 2) v. The Republic (1975) 3 C L.R 432;

Ioannou v The Water Board of Limassol (1984) 3 C.I. R 728

Application.

Application by Counsel for respondent for leave to adduce evidence that the personal files and the confidential reports files of the applicant and the interested parties were before the respondents and were taken into consideration in reaching the sub judice decision to promote the interested party. 20

A. *Haviaras*, for the applicant.

P. *Ioannides*, for the respondent. 25

Cur. adv. vult.

STYLIANIDES J. read the following judgment. In the course of the hearing of this recourse counsel for the respondent Authority sought to adduce evidence that the personal files and the files of the confidential reports of the applicant and the interested party were before the respondents and were taken into consideration by 30

them in reaching the sub judice decision of the promotion of the interested party.

5 Counsel for the applicant objected to the admissibility of such evidence as this was not recorded in the minutes kept by the respondents and the admission of such evidence is tantamount to a correction of such record, a course which is impermissible.

10 Counsel for the respondents on the other hand submitted that this evidence, which is offered *ex abundanti cautela*, will come from an official of the respondent promoting Authority to prove that these files were before the respondents.

15 The revisional jurisdiction of this Court emanates from Articles 146 and 151 of the Constitution and it is defined therein. A recourse is aimed at an administrative decision. The procedure is of inquisitorial nature and regard should be had to the fundamental difference between a civil action and a recourse. The object of the administrative jurisdiction is the judicial control of the acts of the administration.

The proceedings are regulated by the Rules of the Supreme Constitutional Court, 1962.

20 The Court has wide power to receive evidence on any point or matter which the Court might consider necessary for the proper determination of the recourse.

In *Phedias Kyriakides v. The Republic*, 1 R.S.C.C. p. 66, at p. 69 it was said:-

25 «With regard to the law and rules of evidence, in particular, this Court, of course, will first look for guidance to the law and rules of evidence applicable in Cyprus in respect of other courts but whenever it deems it necessary for the proper fulfilment of its mission under the Constitution it will not
30 hesitate to relax or even depart from such law and rules of evidence.

35 Without in any way wishing to prevent parties from raising any legitimate objection to the admissibility of any evidence adduced before this Court, the Court draws their attention to the fact that one of the guiding factors to be applied in considering the admissibility of any such evidence is whether such evidence is reasonably relevant to, and probative of, any

issue before the Court and can or cannot be of assistance to the Court in doing justice in the particular case in accordance with its jurisdiction.

Thereafter the Supreme Constitutional Court admitted evidence in *Michael Theodossiou v. The Republic*, 2 R.S.C.C 44: 5
in *Papapetrou v. The Republic*, 2 R.S.C.C. 61; and *Salih Shurki Saruhan v. The Republic*, 2 R.S.C.C. 133.

The question of the production of evidence in relation to the decision of the Public Service Commission has been dealt with, to a certain extent, in a number of cases, including *Georghiades (No. 2) v. The Republic* (1965) 3 C.L.R. 473, at pp. 478 and 481; *Georghiades and Another v. The Republic* (1966) 3 C.L.R. 827, at p. 840; *Nicos Arkatitis and Others (No. 1) v. The Republic* (1967) 3 C.L.R. 29 at pp. 30-31; *Christou v. The Republic* (1969) 3 C.L.R. 134, at pp. 148, 150, 153, 154; *Frangos v. The Republic* (1969) 3 15
C.L.R. 312, at p. 333; *Niki Michael (No. 2) v. The Republic* (1975) 3 C.L.R. 432, at p. 435; *Ioannou v. The Water Board of Limassol* (1984) 3 C.L.R. 728, at pp. 735 - 739.

The Rules of Evidence applicable in civil proceedings are relaxed in the Revisional Court in view of the material difference 20
between the two jurisdictions.

«... the parties to revisional jurisdiction proceedings, under Article 146 of the Constitution, are at liberty to adduce proof in support of their contentions. But, it is absolutely clear, on the other hand, that the ultimate responsibility for, and control 25
of, the reception of evidence in such proceedings, lies with the trial Judge, in the discharge of his inquisitorial function in relation to the validity of the administrative action, or omission which is sub judice before the Court.

A trial Judge has quite a wide discretion in this respect, but 30
such discretion has to be exercised in a manner which is, inter alia, compatible with the paramount object of the existence of the revisional jurisdiction under Article 146, namely to ensure good administration; therefore, such discretion cannot be 35
exercised in manner which will be inconsistent with good administration.»

(Per Triantafyllides, J., as he then was, in *Christou v. The Republic* (1969) 3 C.L.R. 134, at p. 150.)

Evidence was admitted in *Arkattis* case of the content of the recommendations made by the acting Auditor-General on which reliance was placed for reaching the sub judge decision

5 Evidence which is relevant to the issues raised and tends to complete the picture by placing before the Court all the relevant material on the basis of which the appointing Authority has reached its sub judge decision is admissible. Such evidence must come from official source

The material part for this ruling of the sub judge decision reads -

10 «Το Συμβουλιο-

(α) Αφου ελαβε υπόψη όλα τα στοιχεία που είχε στη διαθεση του αποφάσισεν όπως προσφερθεί προαγωγή στη θέση του Λιμενικου Μηχανοδηγού, 1ης Τάξης στον κ. Γεωργιο Γ. Παναγή, Λιμενικό Μηχανοδηγό 2ης Τάξης.»

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The Board-

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(a) Having taken into consideration all the material, which it had at its disposal. .. . decided to offer promotion to the post of Port Engine Driver, 1st Grade to Mr George G Panaghi, Port Engine Driver, 2nd Grade»

The evidence sought to be adduced falls squarely within the ambit of the principle of admission of evidence to complete the picture of the administrative process and emanates from official source of the organ that took the sub judge decision

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For all the afore reasons I have decided to allow the production of this evidence, but applicant's counsel must be given the opportunity to cross - examine the witness who will testify and, therefore, such evidence has to be given viva voce and not by affidavit.

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Leave granted.