

1987 January 7

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS G. KYRIACOU,

*Applicant,*

v.

1. ELECTRICITY AUTHORITY OF CYPRUS,  
2. THE BOARD OF ELECTRICITY AUTHORITY OF CYPRUS,

*Respondents.*

*(Case No. 880/85).*

*Public Corporations — Promotions — Electricity Authority of Cyprus — Joint Advisory Selection Committee — Regulations governing its establishment, procedure, criteria etc. neither approved by the Council of Ministers nor published in the Official Gazette — Invalid — Sub judice decision annulled.*

**5** *Public Corporations — Personnel matters — The Public Corporations (Regulation of Personnel Matters) Law 61/70 — Section 3 — Absence of rules or regulations governing the exercise of the powers thereunder — Authority lacks competence to exercise such powers.*

**10** The applicant seeks the annulment of the promotion of the interested party to the post of Inspector of Installations, 2nd Grade in preference to him.

**15** Both parties were among those recommended by the Joint Advisory Selection Committee for Promotions. The Sub-Committee of the Authority recommended the interested party, and, finally the Board of the Authority on 29.8.85 decided to promote the interested party. Both the Sub-Committee and the Board took into consideration the recommendations of the Joint Advisory Selection Committee for promotions.

**20** Held, annulling the sub judice decision: (1) (a) The regulations governing the establishment, procedure, criteria etc. of the Joint Advisory Selection Committee are void, because they were neither approved by the Council of Ministers nor published in the Official Gazette.

**25** (b) It is not easy to say to what extent the recommendation of the said Joint Committee influenced the Board of the Authority or the Sub - Committee of Personnel, but as it definitely influenced to some degree their selection, the

sub judge act is tainted with the aforesaid illegality of the Regulations (*Antoniades v E A C* (1985) 3 C L R 2458 adopted )

(2) When a law confers power on any person or body and makes provision how and in what circumstances or places any conditions for the exercise of such power, such power cannot be validly exercised unless there is strict adherence to the statutory prerequisites. On examination of the provisions of section 3 of Law 61/70, the Authority cannot exercise competence on appointment, promotion etc of personnel in the absence of rules or regulations specifically made (*Prodromits v E A C* (1986) 3 C L R 2010 adopted )

5

10

*Sub judge decision annulled*  
*No order as to costs*

*Cases referred to*

*Arsalides v C Y T A* (1983) 3 C L R 510,

*Kofteros v E A C* (1985) 3 C L R 344,

*Lefkatis v The Republic* (1985) 3 C L R 472,

*Antoniades v E A C* (1985) 3 C L R 2458,

*Prodromits v E A C* (1986) 3 C L R 2010

15

**Recourse.**

Recourse against the decision of the respondents to promote the interested party to the post of Inspector of Installations, 2nd Grade, in preference and instead of the applicant

20

*P. Angelides*, for the applicant.

*E Liatsou (Mrs ) for G. Cacoyiannis*, for the respondents.

*Cur. adv. vult.* 25

STYLIANIDES J. read the following judgment. The applicant by this recourse seeks the annulment of the promotion of interested party Michael Kynakides to the post of Inspector of Installations, 2nd Grade, in preference to him.

The applicant since 10.5.73 is the holder of the post of Examiner of Installations. The same post was held by the interested party though the applicant was senior to the interested party.

30

On 29.5.85 the respondents, by notification circulated among the staff, advertised the promotion post of Inspector of Installations, 2nd Grade, in the region of Lamaca-Famagusta. The applicant and the interested party submitted relevant applications.

- 5 The Joint Advisory Selection Committee for promotions at its meeting of 22.7.85 considered the applications and by «a common suggestion» recommended for promotion the applicant, the interested party and another employee of the Authority.

- 10 The Sub-committee of the Authority on personnel matters at its meeting of 27.8.85, taking into consideration the relevant criteria and the recommendation of the aforesaid Selection Committee, recommended the promotion of the interested party, in spite of the seniority of the applicant as the interested party was superior in initiative, administrative, organisational and  
15 supervisory abilities.

- The Board of the Authority on 29.8.85 decided to promote the interested party using the exact wording and reasoning of the Personnel Sub-committee. The Sub-committee on personnel matters and the Board took into consideration, inter alia, the  
20 common recommendation of the Joint Advisory Selection Committee.

- The first ground of law on which the validity of the sub-judice decision is challenged is that it was made under invalid regulations and/or under non-existing regulations, contrary to the provisions  
25 of the law.

- The Joint Advisory Selection Committee was established under regulations made in pursuance of Clause 24(1)(c) of a Collective Agreement between the respondents and the trade union. These regulations govern the establishment, procedure, criteria, etc., of  
30 the Joint Advisory Selection Committee. They were neither approved by the Council of Ministers nor published in the Official Gazette of the Republic and they are, therefore, void — (*Arsalides v. C.Y.T.A.*, (1983) 3 C.L.R. 510; *Kofteros v. Electricity Authority of Cyprus*, (1985) 3 C.L.R. 344; *Lefkatis v. the Republic* (1985) 3  
35 C.L.R. 472; *Pantelis Antoniadis v. Electricity Authority of Cyprus*, (1985) 3 C.L.R. 2458).

- Counsel for the respondents frankly admitted the invalidity of these regulations and the functioning and recommendation of this Selection Committee but he argued that its function was only  
40 advisory; its recommendation was a preparatory step and that the

final decision rested and was taken by the Authority. He submitted further that the sub-judice decision was not taken under void rules or regulations but it was made without any rules or regulations but simply on the power vested in the Authority by the Law. The Public Corporations (Regulation of Personnel Matters) Law, 1970 (No. 61 of 1970) and s.44 of the Electricity Development Law, Cap. 171, only enable the Authority to make rules and regulations and their provisions are not obligatory in the sense that the Authority is not bound to make regulations and exercise its competence on personnel matters in conformity with such rules or regulations.

With regard to the Selection Committee it suffices to repeat what I have said in *Antoniades v. Electricity Authority of Cyprus* (supra):-

«The respondents in arriving at the sub-judice decision took into consideration, inter alia, the recommendation of the Selection Committee. It is not easy to say what weight was attached to this recommendation either by the Authority or by the Sub-Committee of Personnel of the Authority. Definitely it influenced to some degree their selection ....

The sub-judice decision for the promotion of the interested party is tainted with the illegality of the Regulations governing the Selection Committee and, therefore, it is null and void and of no legal effect».

In *Socrates Prodromitis v. The Electricity Authority of Cyprus*— judgment delivered on 8th December, 1986, still unreported\* — commenting on the provisions of s.3 of Law No. 61/70, whereby power was conferred on the Authority for the first time after the establishment of the Republic to appoint, confirm appointment, emplace personnel, promote, transfer, etc., I said that when a Law confers a power on any person or body and makes provision how and in what circumstances or places any conditions for the exercise of such power, it cannot be validly exercised unless there is strict adherence to the statutory prerequisites. On examination of the provisions of s.3 of Law 61/70, the Authority cannot exercise competence on appointment, promotion, etc., of personnel in the absence of rules or regulations specifically made.

\* Reported in (1986) 3 C.L.R. 2010.

5 This recourse succeeds as the sub-judice decision was tainted with the invalidity of the regulations governing the Selection Committee that took some part in the process of the promotion of the interested party and on the second ground that the Authority did not exercise the power vested in it by Law 61/70 under rules or regulations made in conformity with the express provisions of the law.

10 It may be noted that the Authority after a number of decisions of the Court on the matter, starting from *Kofteros* case (supra), issued regulations governing personnel matters. Such regulations were published, after their approval by the Council of Ministers and the House of Representatives, in the Official Gazette of the Republic of 27th December, 1986, Supplement No. 3, page 897, under No. 291/86.

15 In the result the sub-judice decision is declared null and void and of no effect.

In all the circumstances of the case no order as to costs is made.

20

*Sub judice decision  
annulled. No order  
as to costs.*