

1988 November 29

(STYLIANIDES, J.)

IN THE MATTER OF AN APPLICATION BY MARIA DEMETRIOU  
FOR LEAVE TO APPLY FOR AN ORDER OF PROHIBITION

AND

IN THE MATTER OF DISCIPLINARY PROCEEDING BEFORE  
THE DISCIPLINARY BOARD OF DENTISTS.

(Application No. 201/88).

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*Prerogative Orders — Prohibition — Leave to apply for — Principles applicable.*

*Prerogative Orders — Jurisdiction — Refers to matters outside the ambit of Art. 146.1 of the Constitution.*

*Disciplinary proceedings — Dentists — Nature of such proceedings — Possibility that it is outside ambit of Art. 146.1 of the Constitution cannot be excluded.* 5

*Prerogative Orders — Prohibition — When it lies.*

The applicant by this application seeks leave to apply for an order of Prohibition and stay of the proceedings, pending against her, before the Dentists Disciplinary Board. 10

Charges have been preferred against her under the Dentists (Practice and Etiquette) Rules 1970 and the Dentists (Associations, Discipline and Pension Fund) Law, 1968, as amended.

Held, granting leave to apply for an order of prohibition: 15

(1) The applicant at this stage has to satisfy the Court that there is material before it on which, if it were accepted as accurate, an arguable case would be put forward.

(2) The power of this Court to issue prerogative orders extends only to such matters which are not within the jurisdiction of Article 146. The two jurisdictions are mutually exclusive. 20

(3) Prohibition lies not only in excess or absence of jurisdiction, but, also, in a departure from the rules of natural justice.

(4) At this stage, on the basis of the material before it, this Court is not prepared to pronounce that the said disciplinary proceedings are, in view of their essential nature, administrative proceedings coming within the ambit of Article 146.1 of the Constitution, and, therefore, not within the ambit of Article 155.4.

*Leave to apply for prohibition granted.*

*Cases referred to:*

- 10 *Ramadan v. Electricity Authority of Cyprus and Another*, 1 R.S.C.C. 49;
- Vassiliou & Another v. Disciplinary Committees* (1979) 1 C.L.R. 46;
- Economides v. Military Disciplinary Board* (1979) 1 C.L.R. 177;
- In re Droushiotis* (1981) 1 C.L.R. 708;
- 15 *Frangos v. Medical Disciplinary Board and Others* (1983) 1 C.L.R. 256;
- Christofi and Others v. Iacovidou* (1986) 1 C.L.R. 236;
- R. v. Electricity Commissioners* [1924] 1 K.B.D. 204;
- R. v. North, ex parte Oakey* [1927] 1 K.B. 491;
- R. v. Kent Police Authority, ex-parte Godden* [1971] 3 All E.R. 20;
- 20 *Papasavvas v. Educational Service Committee* (1979) 1 C.L.R. 681;
- In re Frangos* (1981) 1 C.L.R. 311;
- Zenios & Another v. Disciplinary Board* (1978) 1 C.L.R. 382;
- In re Psaras* (1985) 1 C.L.R. 561;
- In re Kakos* (1984) 1 C.L.R. 876.
- 25 *In re Kakos* (1985) 1 C.L.R. 250;
- Sidnell v. Wilson & Others* [1966] 1 All E.R. 681;
- Land Securities plc v. Receiver for the Metropolitan Police District* [1983] 2 All E.R. 254.

**Application.**

30 Application for leave to apply for an order of prohibition staying disciplinary proceedings before the Disciplinary Board of Dentists.

*M. Papapetrou*, for the applicant.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicant by this application seeks leave to apply for an order of Prohibition and stay of proceedings, pending against her, before the Dentists Disciplinary Board.

Charges have been preferred against her under the Dentists (Practice and Etiquette) Rules 1970 and the Dentists (Associations, Discipline and Pension Fund) Law, 1968, as amended. 5

The power of this Court to issue prerogative orders is set out in paragraph 4 of Article 155 of the Constitution. By Article 146 a separate system of administration of justice was introduced. This introduced the jurisdiction of continental courts, the older system of which functions in France. A judicial act of an inferior Court cannot be made the subject of a recourse under Article 146. It is reviewable on appeal before a superior court and/or subject to the appropriate prerogative orders. The power of this Court to issue prerogative orders extends only to such matters which are not within the jurisdiction of Article 146. The two jurisdictions are mutually exclusive - (*Hussein Ramadan and Electricity Authority of Cyprus and Another*, 1 R.S.C.C. 49; *Vassiliou & Another v. Disciplinary Committees*, (1979) 1 C.L.R. 46; *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177; *In re Droushiotis*, (1981) 1 C.L.R. 708; *Frangos v. Medical Disciplinary Board and Others*, (1983) 1 C.L.R. 256 *Christofi and Others v. Iacovidou*, (1986) 1 C.L.R. 236). 10 15 20

Prohibition is an order issued out of this Court and directed to an inferior Court, which forbids that Court to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. Prohibition lies not only in excess or absence of jurisdiction, but, also, in a departure from the rules of natural justice - (*R. v. Electricity Commissioners* [1924] 1 K.B.D. 204; *R. v. North, ex-parte Oakey* [1927] 1 K.B. 491; *R. v. Kent Police Authority, ex-parte Godden* [1971] 3 All E.R. 20). 25 30

The first issue is whether I possess jurisdiction to grant the applied for leave.

I would not have possessed jurisdiction if it were clear that the disciplinary proceedings in question are only of administrative nature. 35

At this stage, however, on the basis of the material before me, I am not prepared to pronounce that the said disciplinary

proceedings are, in view of their essential nature, administrative proceedings coming within the ambit of Article 146.1 of the Constitution, and, therefore, not within the ambit of Article 155.4. I have decided that I cannot, at this stage, refuse, on the ground of  
 5 absence of jurisdiction, the leave applied for. The issue of jurisdiction will have to be determined at the outset of the consideration of the merits of the applicant' s application for order of prohibition — (*Papasavvas v. Educational Service Committee*, (1979) 1 C.L.R. 681 and *In re Frangos*, (1981) 1 C.L.R. 311).

10 The possibility cannot be excluded that, depending on the material available before the Court in relation to particular disciplinary proceedings, it might be argued that their essential nature is outside the ambit of Article 146.1 of the Constitution - (see *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177; *Zenios & Another v. Disciplinary Board*, (1978) 1 C.L.R. 382,  
 15 387).

The applicant at this stage has to satisfy the Court that there is material before it on which, if it were accepted as accurate, an arguable case would be put forward. The expression «arguable  
 20 case» is used in the sense of a case made out without the need to go into any rebutting evidence put forward at this preliminary state - (*In re Psaras*, (1985) 1 C.L.R. 561; *In re Kakos*, (1984) 1 C.L.R. 876; *In re Kakos*, (1985) 1 C.L.R. 250; *Sidnell v. Wilson & Others* [1966] 1 All E.R. 681 at p. 686; *Land Securities plc v. Receiver for the Metropolitan Police District*, [1983] 2 All E.R. 254, at p. 258).  
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Having regard to the material before me, set out in the affidavit filed in support, I am satisfied that an arguable case was made sufficiently to justify the grant of leave and I decided to make the following order:-

30 The applicant is granted leave to file an application for prohibition. Such application to be filed within three weeks from today.

The relevant proceedings before the Dentists Disciplinary Board shall be stayed for a period of three weeks from today; if  
 35 applicant applies for order of prohibition within the appointed time, the proceedings to continue to be stayed until the determination of such application.

Copy of this order to be delivered to the Chairman of the Dentists Disciplinary Board. *Application granted.*

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