

(1988)

1988 June 1

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS Z. CHRISTODOULIDES AND ANOTHER,

Applicants,

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondents.

(Case No. 19/88).

Abatement—Of recourse for annulment—Revocation of the sub judice act—Only annulment by the Court saps any other pending against the same act recourse of its subject matter—Notwithstanding revocation, annulment necessary to safeguard applicant's rights under para. 146.6 of the Constitution—The obligations imposed under Art 146.5 of the Constitution are an additional reason, why the recourse has not been abated by reason of the revocation. 5

Recourse for annulment—Revocation of sub judice act—In considering validity of the revoked act, the Court is not bound by reason of such revocation to annul it—Moreover, the Court is not bound by the opinion of the parties. 10

In this case, the respondents revoked the sub judice promotions. The interested parties signified their intention not to challenge by a recourse the revocatory act. The Court, however, proceeded and tried the recourse on its merits and, finally, annulled the sub judice decision. In following such a course, the Court expounded the principles hereinabove indicated. 15

Sub judice decision annulled.

Cases referred to:

Payiatis v. The Republic (1984) 3 C.L.R. 1239;

Vakis v. The Republic (1985) 3 C.L.R. 534;

Kikas and Others v. The Republic (1984) 3 C.L.R. 852;

5 *Philippides and Son v. Republic* (1985) 3 C.L.R. 2588;

Nicolaidis v. The Republic (1987) 3 C.L.R. 9;

Valiantis and Others v. The Republic (1987) 3 C.L.R. 151;

Mavronychis v. The Industrial Training Authority (1986) 3 C.L.R. 1427;

Kyriakides v. Educational Service Commission (1987) 3 C.L.R. 457;

10 *Kyriacou and Others v. Minister of Interior* (1988) 3 C.L.R. 643;

Republic v. Nissiotou (1985) 3 C.L.R. 1335.

Recourse:

15 Recourse against the decision of the respondents to promote the interested parties to the posts of Deputy Manager Technical Services and Deputy Manager Administrative Services in preference and instead of the applicants.

A. S. Angelides, for the applicants.

C. Hadjioannou, for the respondents.

20 *E. Anastasiadou (Miss) for M. Eliades*, for interested party No. 3.

L. Kaloyirou for X. Xenopoulos, for interested party No. 4.

L. Kaloyirou for N. Papaefstathiou, for interested party No. 5.

Cur. adv. vult.

PIKIS J. read the following judgment. This is a recourse made under article 146.1 of the Constitution for the annulment of the decision of the respondents notified on 2.1.88, whereby 5 of the 8 interested parties were promoted to the position of Deputy Manager Technical Services, and 3 of them to the position of Deputy Manager Administrative Services. In the course of the proceedings, notably on 28.3.88, the respondents revoked the decision. Nevertheless, the recourse was pursued at the instance of the applicants for a declaration of nullity under para. 4(b) of article 146 of the Constitution.

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A judicial declaration voiding the action of the respondents is sought, as counsel for the applicants explained, for a twofold purpose: -

(a) To safeguard their interest under para. 6 of article 146 and,

(b) to entitle them to the remedies provided for in para. 5 of article 146 of the Constitution.

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Counsel for the respondents, as well as counsel for the interested parties, acknowledged that the applicants have a right to pursue their application to conclusion notwithstanding the revocation of the act. The revocation of an administrative act does not put an end to the proceedings in which its validity is impugned. This was authoritatively stated to be the law by the Full Bench of the Supreme Court in *Payiatis v. Republic*. (1984) 3 C.L.R. 1239. The implications of a revocatory action on pending proceedings were reviewed in some detail in *Vakis v. Republic* (1985) 3 C.L.R. 534. It was explained that a revocatory decision is in itself an executory act liable to review at the instance of a party prejudiced thereby. In this case the interested parties, those who have appeared, signified they have no intention of challenging the revocation of the sub judice decision. And, as a matter of fact, they do not oppose the annulment of the act. Only the annulment of an administrative act by the Court obliterates the act for all purposes and saps every other recourse directed against the same act of a noticeable subject matter (*Kikas and Others v. Republic*

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(1984) 3 C.L.R. 852). A series of subsequent of decisions of the Supreme Court has acknowledged and given effect to the principles expounded in the above cases. (See, inter alia, *Philippides and Son v. Republic* (1985) 3 C.L.R. 2588; *Nicolaidis v. Republic* (1987) 3 C.L.R. 9; *Valiantis v. Republic* (1987) 3 C.L.R. 151; *Mavronychis v. The Industrial Training Authority* (1986) 3 C.L.R. 1427; *Kyriakides v. Educational Service Commission* (1987) 3 C.L.R. 457).

10 The revocation of an administrative act is not of itself conclusive of the invalidity of the revoked action; nor is an admission of invalidity binding on the Court. Proceedings under article 146 are of an inquisitorial character designed to ensure that the Administration operates within the bounds of the law. Therefore, the Court must itself be satisfied that the revoked action is defective before it declares it to be invalid. Counsel for the respondents informed the Court upon examination of administrative records that the decision, subject matter of the proceedings, is defective for a number of reasons:-

20 (i) Failure to observe the provisions of Regulation 10(5) (b) and (6) of the Personnel Regulations (Personnel Regulations of Cyprus Telecommunications Authority General Regulations 1982, Official Gazette, Supplement No. 3, Part 1, p. 957).

Non compliance stemmed from failure to furnish reasons for departing from the recommendations of the Staff Board.

25 (ii) Failure to make any comparison between candidates eligible for promotion; and

(iii) failure to duly reason the decision taken.

30 Counsel for the applicants subscribed to the correctness of the assesment of the situation made by counsel for the respondents; counsel for the interested parties too, came, it seems, after examination of administrativ records, to the same conclusion.

For the above reasons the decision is liable to be set aside.

As earlier indicated, counsel for the applicants submitted that the annulment is also necessary in the interests of the efficacy of judicial review of administrative action and the rights accruing upon annulment to the successful litigant to move the machinery for the restoration of legality. In *Kyriacou and Others v. Minister of Interior*, (1988) 3 C.L.R. 643 the Full Bench of the Supreme Court, decided by majority, that judicial annulment of administrative action imposes upon the Administration certain obligations for non observance of which responsible officers may be liable in contempt. (See *Kyriacou and Others v. Minister of Interior* (1988) 3 C.L.R. 643; *Republic v. Nissiotou* (1985) 3 C.L.R. 1335).

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Once it has been decided that the sub judice decision is, in this case, liable to annulment in the interest of the protection of the rights of applicants under para. 6 of article 146 of the Constitution, it is unnecessary to give a definitive answer to the second leg of the argument of counsel, founded on the provisions of para. 5 article 146. If I were to venture an opinion on the matter, it would be to the effect that the arguments founded on para. 5 of article 146 are an additional reason justifying an applicant to pursue a recourse to the end notwithstanding revocation and the absence of any intention to raise civil proceedings. Paragraph 5 of article 146 imposes, upon annulment, specific obligations upon the Administration and every other Authority of the Republic to restore legality in the comprehensive manner stated therein. And, it appears to me that it confers upon the party invoking the administrative jurisdiction of the Court a corresponding right to seek a declaration under para. 4(b) of article 146 in the interest of the efficacious protection of this rights.

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In the result, the recourse succeeds and the sub judice decision is declared to be wholly void pursuant to the provisions of para. 4(b) of article 146 of the Constitution.

Sub judice decision annulled.