1988 November 26

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. PANAYIOTIS ANTONIOU,
2. XENIS IOANNOU,

Applicants,

v.

THE IMPROVEMENT BOARD OF SOTIRA,

Respondent.

(Case No. 422/86).

Local Authorities—Appointments—Improvement Boards—Written examinations—A choice of means of forming an opinion—Presumption of regularity—How it operates as regards such examinations—Papers known to whom they belonged, sheets not initialled, paper neither signed at the bottom nor sealed by invigilator—Applicants failed to prove irregularity, favouritism or improper conduct.

Local Authorities—Appointments—Improvement Boards—Interviews, performance at—No record of impressions—Voting as soon as interviews were over—Judging from the result, it is obvious that such impression was in favour of interested party.

Local Authorities—Appointments—Improvement Boards—Qualifications—Additional, but not referred to as an advantage in the scheme of service—Do not constitute an advantage.

General principles of administrative law—Presumption of Regularity—Ascertainment of facts.

Local Authorities—Appointments—Improvement Boards—Written examinations—Results not consistent with marks in school-leaving certificates—A fact that does not prove lack of impartiality.

Natural Justice—Bias—Appointment by Local Authorities—Participation of Chairman of Village Commission—Application of interested party mentioned him as one of the referees for such party—Whether such fact establishes by itself bias or undue influence—Question determined in the negative.

The facts of this case sufficiently appear in the judgment of the Court.

Recourse dismissed.
No order as to costs.

Cases referred to:

Michanikos and Another v. The Republic (1976) 3 C.L.R. 237;

Papallis v. The Republic (1970) 3 C.L.R. 424;

Lambrakis v. The Republic (1973) 3 C.L.R. 29;

Ekkeshis v. The Republic (1975) 3 C.L.R. 548;

HadjiVassiliou and Others v. The Republic (1974) 3 C.L.R. 130;

Korai and Another v. C.B.C. (1973) 3 C.L.R. 546;

Kolokotronis v. The Republic (1980) 3 C.L.R. 418.

Recourse.

Recourse against the decision of the respondent to appoint the interested party to the post of Inspector.

A. S. Angelides, for the applicant.

E. Odysseos, for the respondent.

N. Poukis, for the interested party

Cur. adv. vult.

A. LOIZOU P. read the following judgment. The respondent Board decided to fill the vacant post of Inspector and for that purpose it invited applications by posting notices to that effect in conspicuous places in the village. It further decided to require the candidates to sit for written examinations with the task of which it instructed the District Officer who is also the Chairman of the respondent Board and that the best first five of the candidates should be invited to oral examinations and personal interviews by the Chairman and the members of the respondent Board.

There were in all six applicants among whom the two applicants and the interested party.

The candidates sat for their examinations and their grading was as follows:

Interested party Antonis Kyriakou 58 marks out of a hundred. Applicant 1, Panayiotis Antoniou 55.5 out of a hundred. Applicant 2, Xenis Ioannou 51.5 out of hundred. The remaining three candidates were given much lower marks.

All the candidates were then invited for oral examinations and interviews, but one of them did not attend. After these interviews and examinations the respondent Board proceeded to vote for the selection and appointment of the best candidate. The interested party secured four votes of the six present members of the Council, and applicant Panayiotis Antoniou two votes. The Chairman of the respondent Board, who chaired the meeting did not vote on account of the result of the voting. In consequence of the above the interested party was appointed to the post of Inspector.

As against this decision the two applicants filed the present recourse. All relevant documents, minutes, have been produced as exhibits and for the sake of brevity I need refer to their contents verbatim.

The first ground of law relied upon on behalf of the applicant is that the manner with which the written examinations were con-

ducted and the examination of the papers create as to whether the marking was objective, fair, and reflecting the merit of the examinees. This is based on the fact that the papers were known to whom they belonged as no provision was made to have numbers instead of the names of the candidates on them and that each sheet was not initialled nor was each paper signed at the bottom, nor were they sealed by the invigilator.

The subjects of the examinations were set by the District Officer and they were given in sealed envelopes to the Secretary of the respondent Board, an officer in the office of the District Officer who was entrusted with the duty to hand out the subjects to the candidates and the invigilation of the examinations.

The papers were then collected by the said Secretary, examined and marked by him on the same day and on the following day he transmitted them to the District Officer for the final checking and marking. The results of the written examinations were placed before the respondent Board, at its meeting of the 14th April 1986 for which, though it did not find the results very satisfactory, it decided to select the best for appointment and in fact the interested party was so selected and appointed to the post of Inspector of the respondent Board. With this decision two members disagreed and suggested that the first three of the candidates should sit for further written examinations as, according to their allegation the papers had not been sealed at the conclusion of the examination.

The respondent Board by majority proceeded with the completion of the process which it had laid down at its meeting of the 27th December 1986.

On the totality of the circumstances the applicants on whom the burden of proof lies have failed to prove that there has been any irregularity, favouritism or improper conduct on the part of anybody regarding these examinations, the suggestion of learned counsel for the applicants regarding the proposed by him safeguards for the conduct of the examinations may not even be effec-

tive if one considered that there were so few candidates and only one invigilator who might notice their hand-writing.

There exists the presumption of regularity and the correct ascertainment by the administration of the relevant facts unless the contrary is proved by the applicant. (See *Michanikos and Another v. The Republic* (1976) 3 C.L.R. 237; *Papallis v. The Republic* (1970) 3 C.L.R. 424; *Lambrakis v. The Republic* (1973) 3 C.L.R. 29. Moreover reference may be made to the case of *Ekkeshis v. The Republic* (1975) 3 C.L.R. 548 at p. 556 in which the following is stated:

> "The presumption that an administrative act is reached after a correct ascertainment of relevant facts, has been accepted by this Court, and, in that respect, relevant are the decisions in the case of *Koukoullis and others and the Republic*, 3 R.S.C.C. 134, *Papallis v. The Republic* (1970) 3 C.L.R. 424 at 429. *Kousoulidès v. Republic* (1967) 3 C.L.R. 438 at 447 and *Paraskevas Lordos and Others v. The Republic* (1974) 3 C.L.R. 447 at 457, where it was held that, 'in the absence of any concrete evidence to that effect and because of the presumption of regularity - omnia preasumuntur rite esse act - the conclusion to be drawn, in the circumstances was that there was a proper ascertainment of facts'".

Apart from the mere allegations contained in counsel's address nothing has been adduced to show/establish that these two officials conducted in a dishonest way the examinations in question.

Furthermore the correspondence between counsel for the applicants and the respondent Board does not take the case any further. The two members of the Board who disagreed with the decision of the respondent Board had their views recorded and this is consistent with the case law of this Court and the general principles of Administrative Law. (See Conclusions of the Greek Council of State) (1929-1959) p. 113.

On the question of written examinations I would like to refer to

the case of *HajiVassiliou and Others v. The Republic* (1974) 3 C.L.R. 130 where at p. 139 I said the following:

"I fully subscribe to this approach and I wish only to add that written examinations constitute, generally speaking, a fair procedure for ascertaining the particular knowledge and abilities of candidates in relation to the subject on which they are examined. No doubt, they are neither imposed, nor prohibited by the Law; the assignment of their holdings to the Director of the Department concerned as a person having expert knowledge in the particular subject which the examinations were to cover, does not amount to the respondent Commission abdicating its jurisdiction. In my view, they constitute a choice of means of forming their judgment on the matter under consideration. (See, Stassinopoulos Law of Administrative Act, 1975, p. 333)."

A further argument advanced in support of the contention that the examinations were not held in an impartial manner was that the marks in the school-leaving certificate of the interested party were lower than those of the applicants and therefore he could not make a better performance at these examinations. I do not think that this carries the case of the applicants any further, nor can I go as much as to say that because of that, the examinations were not carried out in an honest and impartial manner.

Counsel for the applicant complained also that the respondent Board did not take into consideration the additional qualifications of the parties but on this point it is sufficient to say that additional qualifications do not constitute an advantage if they are not specifically provided for in the Scheme of Service. (See *Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546; *Kolokotronis v. The Republic* (1980) 3 C.L.R. 418.)

Another ground of law relied upon by the applicants is that at the meeting of the respondent Board there was present and took part in the deliberations the Chairman of the village Committee of Sotera who is an ex officio member of the respondent Board, and

who happened to have been mentioned in the application of the interested party as one of the referees claiming that the reference deprived him of any objectivity in the matter. There is nothing to suggest in the minutes that because of that reference the said Chairman of the village Committee who voted at the secret ballot held for the selection of the most suitable candidate, was himself influenced, or he did influence anybody in favour of the interested party, nor can that factor alone establish bias.

On the other hand learned counsel for the respondent Board referred to the relationship that existed between two dissenting members with the applicants in order to show the well known situation in Cyprus and especially in villages where everybody is known to everybody.

The last ground of law relied upon on behalf of the applicants is that the act suffers because it has no reasoning and that the results of the oral interview have not been recorded in detail in the minutes of the Board. I need hardly deal with the question of reasoning which is apparent from the minutes of the respondent Board and duly supplemented by the relevant material that the Board had before it. As regards the interviews and oral examinations, they were held when the respondent Board was holding its meeting at which the sub-judice decision was taken and there was hardly any need for a record of the impressions created thereby to be kept. Judging from the result it seems that such impressions from the interviews and the oral examinations went in favour of the interested party.

On the totality of the material before me I have come to the conclusion that the applicants have failed to prove striking superiority as against the interested party and or establish any abuse or excess of power. The respondent Board exercised its discretion properly and the sub judice decision was reasonably open to it.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

Recourse dismissed.
No order as to costs.