1979 December 7

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELIE HILLWAY,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF INTERIOR,

Respondent.

(*Case No.* 125/79).

Practice—Particulars of allegation in respondent's opposition—Order for the supply of, can only be made after the applicant has first established such prima facie case as to require, in the interests of justice, the making of such an order—Rule 12(2) *of the Supreme Constitutional Court Rules,* 1962—*Refusal to disclose particulars, applied for at directions stage, on grounds of public interest—Application premature.*

In the opposition in this recourse, which was directed against respondent's decision to deport applicant from Cyprus, the respondent alleged that "the deportation of the said alien was ordered after the Government was satisfied that the applicant has become dangerous for the security of the State and by his conduct and action he caused a breach of public order and a disturbance between the various classes of the people of the Republic, i.e. he acted against public interest". When the case was fixed for directions counsel for the applicant orally requested counsel for the respondent to supply him with full particulars of the above allegations, by virtue of rule 12(2)* of the Supreme Constitutional Court Rules, 1962. The particulars applied for

* Rule 12(2) reads as follows:

"The Court or a Judge may order the respondent to supply information on oath or otherwise or to produce a document or other means of evidence through a properly authorised official".

were refused by reason of a certificate* signed by the Minister of Interior and Defence to the effect that the "said allegations and/or facts should not be disclosed on the ground that disclosure would be injurious to the public interest".

Held, that the Court will not make an order for the supply of particulars unless the applicant has first established such a prima facie case as to require, in the interests of justice, the making of such an order; that what was intended by the enactment of rule 12(2) was to give the Court, during the hearing of a recourse, the power to order, when the justice of the case so requires, the attendance in Court of the applicant, of the respondent or some other person for the purpose of supplying or producing on oath information and documents that the Court considers that they are necessary for disposing fairly of the recourse; that, therefore, rule 12 has nothing to do with the obligation of a party to give further and better particulars, answer interrogatories, or make discovery of documents; and that, accordingly, the application is premature and can only be made (and succeed) after the applicant has first established such a prima facie case as to require, in the interests of justice, the making of such an order.

Application for particulars refused.

Per curiam:

As I anticipate that a similar application for the discovery of the information, evidence and documents relied upon by the respondent will be made by the applicant and that such application will be objected on the same grounds, I must say from now that before deciding such an objection, all such information, evidence and documents must be made available to me so that I can decide whether or not the view expressed in the Minister's certificate should be accepted. (See, *inter alia*, *Conway* v. *Rimmer* [1968] 1 All E.R. 874).

Cases referred to:

Williams v. *Wilcox*, 112 E.R. 857;

Kalisperas v. *The Republic*, 3 R.S.C.C. 146;

Frangoulides v. *The Republic* (1965) 3 C.L.R. 531;

Conway v. *Rimmer* [1968] 1 All E.R. 874;

* Quoted in full at pp. 624–5 *post*.

Rogers v. *Secretary of State for the Home Department* [1972] 2 All E.R. 1057 at p. 1072;

Burma Oil Co. v. *The Bank of England and the Attorney-General*, The Times dated 14th November, 1979;

Science Research Council v. *Nasse, Layland Cars (B.L. Cars Ltd.)* v. *Vyas*, The Times dated 15th November, 1979.

Application.

Application by the applicant, in a recourse against the decision of the respondent to order his deportation from Cyprus, for the supply to him of full particulars of the allegations made by respondent in paragraph 12 of the opposition.

L.N. Clerides, for the applicant.

Cl. Antoniades, Counsel of the Republic, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. In the present case the applicant, an alien, prays for a declaration of the Court that the act and/or decision of the respondent to order his deportation from Cyprus, taken and/or put into effect on the 12th March, 1979, should be declared null and void and of no effect whatsoever.

The respondent filed an opposition and by para. 12 of same he alleged that "the deportation of the said alien was ordered after the Government was satisfied that the applicant has become dangerous for the security of the State and by his conduct and action he caused a breach of public order and a disturbance between the various classes of the people of the Republic, i.e. he acted against public interest".

On the 2nd June, 1979, when the case was fixed for directions, learned counsel for the applicant orally requested counsel appearing for the respondent to supply him with full particulars of the allegations made by the respondent in para. 12 of the opposition, stating that he was not interested and did not want to know the source of the information of the Government regarding the alleged actions of his client.

Counsel appearing for the respondent then applied for an adjournment with a view to placing the request of the applicant before the Minister of Interior and Defence.

The particulars applied for were, on the 16th June, 1979,

refused by reason of a certificate signed by the Minister of Interior and Defence, which is as follows:-

" I, Christodoulos Veniamin, Minister of Interior and Defence, of the Government of the Republic of Cyprus and in my capacity as Chief Immigration Officer under the Aliens and Immigration Law, Cap. 105, as amended, hereby certify that:-

1. On or about the 4th of June, 1979, my attention was drawn to Applicant's application dated 2nd June, 1979 for the supply to Applicant's Counsel of full particulars of the allegations and/or facts set out in Paragraph 12 of the Opposition that the Applicant has become a person dangerous to the security of the State and that by his conduct and various actions the Applicant has committed a breach of the peace and that he promoted feelings of ill-will between the various classes of the Republic and, therefore, he has harmed public interest.

2. I have personally examined all the evidence concerning the said allegations and/or facts and have carefully considered them and I have formed the opinion that the said allegations and/or facts should not be disclosed on the ground that the disclosure would be injurious to the public interest.

3. I, personally examined and carefully considered the evidence making up the above described full particulars of the allegations and/or facts and I formed the view that—

   (a) The supply of the said full particulars fall into a class of documents and/or information the disclosure of which would be injurious to the public interest.

   (b) Such full particulars emanate from evidence obtained by Police and/or other informers.

   (c) Such full particulars if supplied will reveal or are capable of revealing the identity of the person or persons who gave the information concerning the above said conduct of the Applicant, on promise of confidentiality.

4. In my opinion it is necessary in the public interest for

the proper functioning of the public service in general and of the Ministry of Interior in particular that the supply of such full particulars should be withheld for the reasons as stated hereinabove".

As a result, the application was set down for hearing so that the matter be thrushed out in Court.

When opening the case, counsel for the applicant stated that he based his application on rule 12(2) of the Supreme Constitutional Court Rules 1962 and the inherent powers of the Supreme Court.

Rule 12(2) reads:-

" The Court or a Judge may order the respondent to supply information on oath or otherwise or to produce a document or other means of evidence through a properly authorised official".

What the applicant, in my opinion, attempts to achieve by his application, is the disclosure by the respondent of all documents, evidence and information that led the respondent to the decision that the applicant had to be deported from Cyprus for the reasons stated in para. 12 of the opposition. In other words, what the applicant seeks is the disclosure of all the evidence in the hands of the respondent sustaining his allegations.

As was said in the case of *Williams* v. *Wilcox*, 8 A.D. and E. at p. 331 (reported in 112 English Reports 857):-

" The certainty of particularity of pleading is directed, not to the disclosure of the case of a party, but to the informing the Court, the jury, and the opponent, of the specific proposition for which he contends; and a scarcely less important object is the bringing the parties to issue on a single and certain point, avoiding that prolixity and uncertainty which would very probably arise from stating all the steps which lead up to that point".

Before I proceed to see whether it will be necessary for the purposes of this application to decide the objection of the respondent, I feel that I must examine what is the meaning and effect of rule 12 and what is envisaged by it.

Although no specific mention of rule 12 is made in *Kalisperas*

v. *Republic*, 3 R.S.C.C. p. 146, it is clear that the ruling given by the President of the Supreme Constitutional Court deals with this rule. *Kalisperas'* case was one in which the applicant summoned a member of the Public Service Commission to give evidence regarding what took place at a meeting of the Commission relevant to his transfer.

The Supreme Constitutional Court's ruling was the following:-

> " The Court, itself, however, may decide, and this is a power which would be used sparingly in the interests of justice, to order that the body in question or any member thereof should supply the Court with information, on oath or otherwise, concerning any particular matter at issue. The Court will not make such an order unless the Applicant has first established such a prima facie case as to require, in the interests of justice, the making of such an order.
>
> It is useful to observe that in a case where the Applicant has raised a presumption that a decision of an official body has been taken in excess or in abuse of its powers it certainly is not to the detriment of such body but, on the contrary, it is in the public interest that such body should endeavour to rebut by evidence this presumption, because if it remains unrebutted the Court may in a proper case, come to the conclusion that the body in question has in fact acted in excess or in abuse of its powers".

This ruling was followed and adopted by Munir J. in the case of *Frangoulides* v. *The Republic*, (1965) 3 C.L.R. 531.

In the light of the above authorities, which I consider to be deciding the very point before me, and having regard to the wording of rule 12, I have come to the conclusion that what was intended by the enactment of this rule was to give the Court, during the hearing of a recourse, the power to order, when the justice of the case so requires, the attendance in Court of the applicant, of the respondent or of some other person for the purpose of supplying or producing on oath information and documents that the Court considers that they are necessary for disposing fairly of the recourse. This rule, i.e. rule 12, has, therefore, nothing to do with the obligation of a party to give

further and better particulars, answer interrogatories, or make discovery of documents.

Having in mind the opinion I hold as to the meaning and effect of rule 12, I find that the application is premature and that this can only be made (and succeed) after the applicant has first established such a prima-facie case as to require, in the interests of justice, the making of such an order.

Before dismissing the application and as I anticipate that a similar application will be made by the applicant, by which he will pray for the discovery of the information, evidence and documents relied upon by the respondent to reach his decision for the deportation of the applicant, and that that application will be objected on the same grounds, I must say from now that before deciding such an objection, all such information, evidence and documents must be made available to me so that I can decide whether or not the view expressed in the Minister's certificate should be accepted.

That this is the proper course to be followed when an objection of this kind is raised, appears from the following authorities: *Conway* v. *Rimmer*, [1968] 1 All E.R. 874; *Rogers* v. *Secretary of State for the Home Department*, [1972] 2 All E.R. 1057 at 1072e; and the two very recent judgments of the House of Lords which are reported in the Times dated 14th and 15th November, 1979, namely the *Science Research Council* v. *Nasse*, *Layland Cars (B.L. Cars Ltd.)* v. *Vyas*, and the *Burma Oil Co.* v. *The Bank of England and the Attorney-General*, in which case, four out of the five Lords of Appeal called for private examination by them of documents for which the Crown claimed public interest immunity.

In the result, the application is dismissed but there will be no order as to costs.

Application for particulars dismissed. No order as to costs.