

GEORGE MILIOTIS AND 2 OTHERS,

Appellants

v.

MUSTAFA HUSSEIN,

Respondent.

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GEORGE
MILIOTIS
AND 2 OTHERS
v.
MUSTAFA
HUSSEIN

(Civil Appeal No. 4432).

Constitutional Law—Unconstitutionality of a law, or provision thereof passed after independence day—Where it is material for the determination of any matter at issue in proceedings before the Courts—Reference of the question to the Supreme Constitutional Court for its determination—Article 144, paragraph 1, of the Constitution—The Courts must refuse to refer such a question to the Supreme Constitutional Court, unless they are satisfied : (1) that the question raises a point of unconstitutionality, (2) that it is material for the determination of any matter at issue in the case ; and (3) that it raises specific than general issues and it is framed in such a way as to show clearly the question of unconstitutionality raised—Therefore the trial Court in this case rightly refused to reserve the question of unconstitutionality raised by the appellant herein (respondent in the Court below) on the ground that same was too vague and ambiguous.

Constitutional Law—The Agricultural Debtors Relief Law, 1962—Question of its constitutionality raised—But left undecided—Articles 28 and 144.1 of the Constitution.

Paragraph 1 of Article 144 of the Constitution, provides :

“ A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court.”

This was an unsuccessful appeal against an order of the Agricultural Debtors' Relief Court, at Larnaca, dismissing the appellant's herein, respondent's 2 in the proceedings before the Court below, application to refer the constitutionality of the Debtors Relief Law, 1962, to the Supreme Constitutional Court under the provisions of Article 144, paragraph 1, of the

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Constitution. The grounds upon which the inferior Court refused that application were that it was "vague and ambiguous". And the High Court upholding that refusal:—

Held, (1) the difficulty with the appellant's request in this case is that it fails to raise specific points for consideration by the Supreme Constitutional Court.

(2) It is quite impossible in this case to determine the issues which the appellants desire to have referred, and in the circumstances the appeal is dismissed.

Appeal dismissed.

Cases referred to :

The Republic and Nicolas Pantopiou Loftis, 1 R.S.C.C. 30 :

The Mayor, etc., of Nicosia and Christakis Loizides, 1 R.S.C.C. 59.

Appeal.

Appeal against the judgment of the Agricultural Debtors' Relief Court of Larnaca (Papaioannou and Halil Ag. D.J.J.) dated the 11.4.63 (Appl. No. 72/62) dismissing an application to refer the Constitutionality of the Agricultural Debtors' Relief Law, 1962, to the Supreme Constitutional Court for determination.

*G. M. Piki*s for the appellants.

No appearance for the respondent.

The facts sufficiently appear in the judgment of the High Court delivered by :

WILSON, P. : This is an appeal against an order of the Agricultural Debtors Relief Court made at Larnaca on April 11, 1963, dismissing the appellants' application to refer the constitutionality of the Debtors Relief Law, 1962 to the Supreme Constitutional Court for determination.

The trial Court was of the opinion as stated in the formal judgment " This Court, having considered the question of unconstitutionality raised on behalf of creditor No. 2 and found the same to be vague and ambiguous doth refuse to reserve the question raised for the decision of the Supreme Constitutional Court".

In the reasons for judgment the Court expressed the same opinion after hearing fully the submissions made on behalf of creditor No. 2. The form of objection was put to the trial Court as follows :

" I dispute the constitutionality of the Debtors Relief Law, 1962. The rights of creditor (2) as safeguarded

by article 28 of the Constitution are violated by the provisions of the Debtors Relief Law, the constitutionality of which I challenge. I invite Your Honour's Court to refer this question of unconstitutionality to the Supreme Constitutional Court for determination in so far as the determination on such question is material for the determination of the matters in issue in this application. I submit that under Article 144 (1) of the Constitution, Your Honour's Court is bound to reserve the question raised to the S.C.C. I cite in support the decisions of the S.C.C. in Applications Nos. 8/61 and 23/61".

It is quite obvious from the many precedents cited to us by counsel for the appellants that it is the practice of the Supreme Constitutional Court to consider specific issues rather than general issues, such as the appellants seek to raise in this case. Furthermore, we have in mind that the trial Court, as we understand it, is now required to refuse to reserve a question under Article 144, unless the party raising it frames it in terms which are reasonably clear and sufficient. Before the trial Court refers any question to the Supreme Constitutional Court it must be satisfied—

- (1) that the question raises a point of unconstitutionality ;
- (2) that it is material for the determination of any matter at issue in the case ; and
- (3) that it is framed in such a way as to show clearly the question of unconstitutionality raised.

This decision relates to a law passed since independence.

The difficulty with the appellants' request in this case is that it fails to raise specific points for consideration by the Supreme Constitutional Court.

It is contended on behalf of the appellants that as long as the question is framed in a language which is clear as to grammar and syntax that it must be referred. In our view, that is not so. The appellants must comply with the direction given above.

It is quite impossible in this case to determine the issues which the applicants desire to have referred, and in the circumstances the appeal is dismissed.

Appeal dismissed.