

PANTELIS PETRIDES,

Appellant-Plaintiff,

v.

THE GREEK COMMUNAL CHAMBER AND ANOTHER,

Respondents-Defendants,

PANTELIS
PETRIDES
v.
THE GREEK
COMMUNAL
CHAMBER
AND ANOTHER

(Civil Appeal No. 4467).

Constitutional Law—“Ambiguity”—Meaning of the word occurring in Article 149 (b) of the Constitution—The word “ambiguity” in that Article means “ἀσάφεια” in the Greek texts “müphemiyet” in the Turkish text of the Constitution—A mere difference of opinion as to the legal effect of a constitutional (or statutory) provision is not necessarily an “ambiguity”—Distinction between a provision which is ambiguous and a provision which is difficult to interpret.

Constitutional Law—Paragraph 6 of Article 146 of the Constitution—“Any person aggrieved” within that paragraph—No “ambiguity” in that expression—Paragraph 6 of Article 146 of the Constitution not only is not ambiguous in the present case, but it is not even difficult to interpret and apply—Therefore there is no scope in this case for the application of Article 149 (b) of the Constitution whereby the Supreme Constitutional Court has exclusive jurisdiction to resolve any “ambiguity” in the Constitution.

Statutes—Construction—Ambiguity in a statutory provision—Meaning of the word.

Article 149 of the Constitution provides :

“The Supreme Constitutional Court shall have exclusive jurisdiction—

(a) (b) to make in case of ambiguity, any interpretation of this Constitution, due regard being had to the letter and spirit of the Zurich Agreement dated the 11th February, 1959, and of the London Agreement dated the 19th February, 1959.”

Article 146 of the Constitution provides :

1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omis-

sion of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

2.

3.

4. Upon such a recourse the Court may, by its decision—

- (a) confirm, either in whole or in part, such decision or act or omission ; or
- (b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever ; or
- (c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

5.

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the Court or to be granted such other just and equitable remedy as such court is empowered to grant.”

The appellant applied in November 1960 to the respondents *for relief by way of compensation for damage suffered due to the action of the security forces or riots during the period which preceded the establishment of the Republic of Cyprus.* The claim amounting to £13,228 was based on Law No. 12 of 1961 of the Greek Communal Chamber. After consideration by the appropriate committee of the respondents, the claim was turned down by a letter dated the 1st August, 1962.

Against this decision of the respondents the applicant (appellant) filed a recourse under the provisions of Article 146 of the Constitution to the Supreme Constitutional Court.

The recourse was eventually determined by the Supreme Constitutional Court by its judgment or order made on April 2, 1963, as follows :—

“ The decision of Respondent dated the 31st July, 1962, as communicated to Applicant by letter dated the 1st August, 1962, is null and void and of no effect whatsoever.”

Acting on this decision the appellant requested the respondents again to deal with his claim and receiving no satisfactory answer he filed an action in the District Court of Nicosia claiming against the respondents the sum of £13,228 as compensation under the provisions of paragraph 6 of Article 146 of the Constitution (*supra*).

Before answering this claim, the respondents, filed an application on the 5th June, 1963, under Order 16, r. 9 of the Civil Procedure Rules “ that the service of the writ of summons in the above action, be declared null and void for want of jurisdiction of the Court ”, and later amended to ask also for the “ setting aside of the writ of summons ”. The appellant opposed this application basing the opposition on Article 146, paragraphs 1, 4, 5 and 6 of the Constitution (*supra*).

After hearing both sides on the merits of the application, the Court reserved their decision until the 20th July, 1963, when they made the ruling attacked by the present appeal :—

“ In our view (the District Court say), an ambiguity has arisen as to the interpretation of paragraph 6 of Article 146 of the Constitution and this ambiguity can only be resolved by a decision of the Supreme Constitutional Court. This is in accordance with a number of decisions of the Supreme Constitutional Court and we mention in particular case No. 291/62, reported in 4, R.S.C.C. at p. 91. (*The Cyprus Grain Commission, etc., and the New Vatyli Co-operative Credit Society* 4 R.S.C.C. 91).

In accordance with that decision an ambiguity arises when a party to an action interprets a particular provision of the Constitution in one way and the other party in a different way. In the present case the plaintiff has contended that he is entitled, under paragraph 6 of Article 146 of the Constitution to institute legal proceedings in this Court for the recovery by way of damages of the amount to which he alleges he would be entitled if the provisions of the relevant law were applied by the defendants.

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The submission of the counsel for the defendants is that Article 146 (6) does not confer such a right on the plaintiff, but that in accordance with the decision of the Supreme Constitutional Court, the defendants must consider the compensation payable to the plaintiff under the relevant law and that, if they should fail to do so, or if the plaintiff is not satisfied with their decision, the plaintiff's only remedy should be a fresh recourse to the Supreme Constitutional Court."

The District Court then proceeded to formulate "the ambiguity" in "general terms". The parties were then invited to state their views on the way "the ambiguity" was formulated. And upon a statement by counsel for the defendants that he agreed "as to the way the ambiguity has been formulated", and a statement by the plaintiff that he "cannot say anything", the matter was left at that, presumably as a ruling containing an order of the Court referring "the ambiguity" as formulated to the Supreme Constitutional Court for their decision.

From this ruling of the District Court of Nicosia the plaintiff appealed on the grounds that Article 146 of the Constitution affords him the remedy to pursue his claim in the District Court by the action which he has filed and that the text of the Article contained no ambiguity as to its meaning.

The High Court in allowing the appeal :—

Held, (1) we are unanimously of the opinion that the word "ambiguity" in the English version of Article 149 (b) of the Constitution, cannot carry any other meaning than that corresponding to the word "ἀσάφεια" in the Greek text and the expression "müphemiyet" in the Turkish text ; the ordinary meaning of these words, in the respective language. "In case of ambiguity" in English, cannot mean anything else as far as the Constitution of the Republic of Cyprus is concerned that the expression "ἐν περιπτώσει ἀσαφείας" means in the Greek language, and the expression "müphemiyet halinde" mean in Turkish.

2 (a) And in our view these words and expressions have a perfectly clear meaning in their ordinary use. A difference of opinion as to the legal effect or a statutory provision is a most common occurrence in litigation. For counsel on opposite sides to take a different view as to the legal effect of a statutory provision affecting their client's case, is so frequent an event

in all courts, that to say that this constitutes an ambiguity in the statute, would almost amount to saying that no statutory provision is free from ambiguity. And there can be no doubt whatsoever. The Court further stated that the Constitution of the Republic is part of the law which every Court has to apply in performing its judicial functions. It is in fact the supreme law, as expressly stated in Article 179, overriding and regulating, as such, all other laws in force.

(b) We are, therefore, clearly of the opinion that the provisions in Article 149 (b) apply to ambiguities in the text of the Constitution, which have to be cleared or resolved by the Supreme Constitutional Court "due regard being had to the letter and spirit" of the Zurich and of the London Agreement upon which the Constitution was built. They do not refer to differences of opinion as to the legal effect of Constitutional provisions on the rights of the parties to litigation, which is for the appropriate court to declare and to apply in each case. *The Cyprus Grain Commission, etc., and the New Vatyli Co-operative Credit Society*, 4 R S C C 91 to the contrary effect, *not followed*.

(3) As far as this case is concerned, we are unanimously of the view that there is no ambiguity in the expression "any person aggrieved" occurring in Article 146 (6), and we are inclined to think that, had it not been for the meaning given to the word ambiguity by the Supreme Constitutional Court in the cases referred to in the ruling now before us on appeal, the District Court would have proceeded to decide the issue before them as to the effect of Article 146 (6) on the legal rights of the parties, without putting the legal problem before them in the cloak of an ambiguity in the Constitution.

(4) The question for decision before the District Court in this case, is, clearly, whether the respondents are entitled to have appellant's writ of summons and service thereof, set aside for want of jurisdiction in the District Court to hear and determine in the ordinary course, appellant's claim to legal right for compensation against the respondents, as set out in the action. As the matter is now pending before the District Court, we do not wish to say anything more at this stage regarding appellant's claim or respondents' way of dealing with it. All we decide now is that the appeal must succeed, and the ruling made on the 20th July, 1963, interrupting the proceedings in respondents' application, be set aside, so that the District Court may now proceed to determine the application on its merits, such as they may happen to be.

(5) *Per* JOSEPHIDES, J.:—

- (a) Paragraph 6 of Article 146 of the Constitution abundantly clarifies that “any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article (*as in this case*) . . . shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages . . .”
- (b) “A provision can only be said to be ambiguous where, having applied all the proper canons of interpretation, the matter is still left in doubt”. *Per* Lord Parker, C.J. in *Bowers v. Gloucester Corporation* (1963) 1 All E.R. 437, at p. 439, applied.
- (c) In the present case it seems to me that not only paragraph 6 of Article 146 of the Constitution is not ambiguous but it is not even difficult to interpret and apply : Cf. *The Republic v. Lefkios Rodosthenous* (1961) C.L.R. 152, at pp. 158 to 161.

Appeal allowed. Judgment and order as per (5) hereabove. Costs of this appeal to be costs in cause but not against the plaintiff-appellant in any event.

Cases referred to :

The Cyprus Grain Commission, etc. and the New Vatyli Co-operative Credit Society, 4 R.S.C.C. 91.

Maro Pantelidou and the Republic of Cyprus, 4 R.S.C.C. 100.

The Republic v. Lefkios Rodosthenous (1961) C.L.R. 152, at pp. 158 to 161.

Bowers v. Gloucester Corporation (1963) 1 All E.R. 437, at p. 439, applied.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Evangelides and Ioannides, D.JJ.) dated the 20th July, 1963, (Action No. 2017/63) whereby a difference of opinion as to the effect of Article 146 (6) of the Constitution on the claim of the appellant-plaintiff in an action instituted by him under the provisions of Article 146.6

of the Constitution, was referred to the Supreme Constitutional Court for interpretation, as an "ambiguity" in the Constitution, covered by Article 149 (b).

The appellant in person.

G. Tornaritis for the respondents.

The facts sufficiently appear in the judgment of the High Court :—

WILSON, P. : Mr. Justice Vassiliades will deliver the judgment of the Court in this appeal.

VASSILIADES, J. : This is an appeal from a decision of the District Court of Nicosia, in the form of a ruling, whereby a difference of opinion as to the effect of article 146 (6) of the Constitution on the claim of the appellant-plaintiff in an action against the respondents-defendants, was to be referred to the Supreme Constitutional Court for interpretation, as an "ambiguity" in the Constitution, covered by article 149 (b).

The appellant applied in November 1960, to the respondents, for relief by way of compensation for damage suffered by action of security forces or riots during the difficult period which preceded independence, in connection with which the Government of the Republic made a grant of an amount of £620,000 to the respondents by a Supplementary Appropriation Law (No. 4/60) in October, 1960.

For the purpose of dealing with such claims, the respondents caused special legislation to be promulgated in August, 1961, in the form of Law 12/61 of the Greek Communal Chamber. In the meantime, the appellant submitted his claim in detail, showing his alleged loss at £13,228. This claim was considered by the appropriate Committee of the respondents, who on the 6th December, 1961, informed the appellant in writing that he could not be compensated under the relevant legislation.

Against that decision of the respondents, the appellant filed a recourse to the Supreme Constitutional Court in January, 1962 (Case No. 19/62) which was later withdrawn (in May, 1962) upon an undertaking on the part of the Committee of Selection and Administration of the respondents, that appellant's claim would be reviewed not later than 31st July, 1962.

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Early in August of that year, the appellant was informed by the respondents, that the Committee in question, had decided on the 31st July, 1962, not to grant him any compensation. Against this decision, the appellant filed a fresh recourse to the Supreme Constitutional Court (Case No. 168/62) which after full consideration at the different stages of the proceeding, was determined by the judgment and order made on the 2nd April, 1963, copy of which is now before us. For the reasons stated therein and on the facts before them as set out in their judgment, the Supreme Constitutional Court made the Order stated in the first part of the judgment which reads as follows :

“ *The Order.* The Court declares :—

The decision of Respondent dated the 31st July, 1962, as communicated to Applicant by letter dated the 1st August, 1962, is null and void and of no effect whatsoever.”

On the strength of this decision, the appellant requested again the respondents to deal with his claim for compensation ; but receiving no satisfaction until the 16th of May, 1963, filed an action in the District Court of Nicosia (No. 2017/63) claiming against the respondents £13,228 compensation, on the particulars endorsed on the writ of summons under the heading : “ Statement of Claim ”. The respondents were served with the writ on the 17th May, 1963.

Before answering the claim, the respondents filed an application on the 5th June, 1963, under Order 16, rule 9, “ that the service of the writ of summons in the above action, be declared null and void for want of jurisdiction of the Court ”. This application was supported by an affidavit sworn by a clerk of the respondents on the same date ; and was opposed by the appellant herein, with a notice filed the following day (6.6.63) together with a five-page affidavit sworn by the appellant, stating, mostly, the difficulties he was encountering on the part of the respondents in the pursuance of his claim. The opposition of the appellant was mainly based “ on article 146, paragraphs 1, 4, 5 and 6 of the Constitution of the Republic of Cyprus.”

At the hearing of the application, the prayer was amended at the instance of the applicants, to ask also for the “ setting aside of the writ of summons.” Counsel for the applicants (respondents herein) addressing the Dist-

riect Court, relied mainly on the provisions of article 146 of the Constitution, particularly paragraph 6 thereof.

After hearing both sides on the merits of the application, the Court reserved their decision until the 20th July, 1963, when they made the ruling attacked by the present appeal :

“ In our view (the District Court say), an ambiguity has arisen as to the interpretation of paragraph 6 of Article 146 of the Constitution and this ambiguity can only be resolved by a decision of the Supreme Constitutional Court. This is in accordance with a number of decisions of the Supreme Constitutional Court and we mention in particular case No. 291/62, reported in 4, R.S.C.C. at p. 91 ”.

In accordance with that decision an ambiguity arises when a party to an action interprets a particular provision of the Constitution in one way and the other party in a different way. In the present case the plaintiff has contended that..... he is entitled, under paragraph 6 of Article 146 of the Constitution to institute legal proceedings in this Court for the recovery by way of damages of the amount to which he alleges he would be entitled if the provisions of the relevant law were applied by the defendants.

The submission of the counsel for the defendants is that Article 146 (6) does not confer such a right on the plaintiff, but that in accordance with the decision of the Supreme Constitutional Court, the defendants must consider the compensation payable to the plaintiff under the relevant law and that, if they should fail to do so, or if the plaintiff is not satisfied with their decision, the plaintiff's only remedy should be a fresh recourse to the Supreme Constitutional Court.”

The District Court then proceeded to formulate “ the ambiguity ” in “ general terms ” which they did in a sentence of no less than 120 words, which I find unnecessary for the purposes of this appeal, to reproduce here. The parties were then invited to state their views on the way “ the ambiguity ” was formulated. And upon a statement by counsel for the defendants that he agreed “ as to the way the ambiguity has been formulated ”, and a statement by the plaintiff that he “ cannot say anything ”,

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the matter was left at that, presumably as a ruling containing an order of the Court referring "the ambiguity" as formulated to the Supreme Constitutional Court for their decision.

From this ruling of the District Court, the plaintiff appealed on the grounds set out in his notice of appeal, which may be summarised in the contention that the provisions of Article 146 of the Constitution afford him the remedy to pursue his claim in the District Court by the action which he has filed against the respondents. And that the text of the article contains no ambiguity as to its meaning.

Learned counsel for the respondents, on the other hand, contended that the result of the decisions in the case of the *Cyprus Grain Commission* for an interpretation of the Constitution under Article 149 (Case 291/62 reported in 4, R.S.C.C., p. 91) and in the case of *Maro Pantelidou and The Republic of Cyprus through the Public Service Commission* (Case No. 49/62 reported in 4 R.S.C.C. p. 100) is that a difference of opinion as to the effect of an article of the Constitution, amounts to an "ambiguity" under Article 149; and as such, can only be resolved by a reference to the Supreme Constitutional Court as provided in that article. As to where does the ambiguity arise in connection with the present case, counsel submitted that it arises regarding the meaning of the expression "Any person aggrieved" in paragraph 6 of article 146.

As it has already transpired, during the argument, none of the members of this Court finds any difficulty, in reaching our conclusion in the matter before us. We are unanimously of the opinion that the word "ambiguity" in the English version of article 149 (b) of the Constitution, cannot carry any other meaning than that corresponding to the word "ἀσάφεια" in the Greek text and the expression "müphemiyet" in the Turkish text; the ordinary meaning of these words, in the respective language. "In case of ambiguity" in English, cannot mean anything else as far as the Constitution of the Republic of Cyprus is concerned, than the expression "ἐν περιπτώσει ἀσαφείας" means in the Greek language, and the expression "müphemiyet halinde" means in Turkish. And in our view these words and expressions have a perfectly clear meaning in their ordinary use. A difference of opinion as to the legal effect of a statutory provision is a most common occurrence in litigation. For

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counsel on opposite sides to take a different view as to the legal effect of a statutory provision affecting their client's case, is so frequent an event in all courts, that to say that this constitutes an ambiguity in the statute, would almost amount to saying that no statutory provision is free from ambiguity. And there can be no doubt whatsoever, I believe, that the Constitution of the Republic is part of the law which every Court has to apply in performing its judicial functions. It is in fact the supreme law, as expressly stated in article 179, overriding and regulating, as such, all other laws in force.

We are, therefore, clearly of the opinion that the provisions in article 149 (b) apply to ambiguities in the text of the Constitution, which have to be cleared or resolved by the Supreme Constitutional Court "due regard being had to the letter and spirit" of the Zurich and of the London Agreements upon which the Constitution was built. They do not refer to differences of opinion as to the legal effect of constitutional provisions on the rights of the parties to litigation, which is for the appropriate Court to declare and to apply in each case.

As far as this case is concerned, we are unanimously of the view that there is no ambiguity in the expression "any person aggrieved" occurring in article 146 (6); and we are inclined to think that, had it not been for the meaning given to the word ambiguity by the Supreme Constitutional Court in the cases referred to in the ruling now before us on appeal, the District Court would have proceeded to decide the issue before them as to the effect of article 146 (6) on the legal rights of the parties, without putting the legal problem before them in the cloak of an ambiguity in the Constitution.

The question for decision before the District Court in this case, is, clearly, whether the respondents are entitled to have appellant's writ of summons and service thereof, set aside for want of jurisdiction in the District Court to hear and determine in the ordinary course, appellant's claim to legal right for compensation against the respondents, as set out in the action. As the matter is now pending before the District Court, we do not wish to say anything more at this stage regarding appellant's claim or respondents' way of dealing with it. All we decide now is that the appeal must succeed, and the ruling made on the 20th July, 1963, interrupting the proceedings in respondents' application, be set aside, so that the District

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Court may now proceed to determine the application on its merits, such as they may happen to be. Costs of this appeal to be costs in cause, but not against the plaintiff in any event.

There will be judgment and order for costs, accordingly.

JOSEPHIDES, J. : I agree and I would like to add this. To me the expression "person aggrieved" in Article 146, paragraph 6, of the Constitution is plain and unambiguous and there is no question of any "ambiguity" whatsoever.

Paragraph 6 abundantly clarifies that "any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article (as in this case) shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a Court for the recovery of damages" In this case the appellant alleges that "his claim has not been met to his satisfaction" by the organ or authority concerned (the respondents), indeed his letters to the respondents remained unanswered for six weeks, and he has instituted an action in the District Court claiming damages. The onus is on the appellant to prove his contentions.

To quote the words of Lord Parker, C.J. in a recent case (*Bowers v. Gloucester Corporation* (1963) 1 All E.R. 437, at p. 439), "I think that this is a typical case where, in argument before the Court, a confusion has arisen between a provision which is ambiguous and a provision which is difficult to interpret. It may well be that many sections of Acts are difficult to interpret, but can be interpreted by the proper canons of construction." As Lord Parker says in the same case (in relation to a penal section) a provision can only be said to be ambiguous where, having applied all the proper canons of interpretation, the matter is still left in doubt (at page 439).

In the present case it seems to me that not only paragraph 6 of Article 146 is not ambiguous but it is not even difficult to interpret and apply : Cf. *The Republic v. Lefkios Chr. Rodosthenous*, (1961) C.L.R. 152, at pages 158 to 161.

Appeal allowed. Order as above.