

PELOPIDAS SEVASTIDES,

Applicant,

AND

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

PELOPIDAS
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and
THE
ELECTRICITY
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OF CYPRUS

(Case No. 191/62).

Jurisdiction of the Supreme Constitutional Court under Article 146 of the Constitution—“ Act of decision or omission of any organ, authority or person exercising any executive or administrative authority ” in paragraph 1 of Article 146 of the Constitution—Realm of public law—Realm of private law—Criterion of the distinction.

Public Corporations—The Electricity Authority of Cyprus, established under the Electricity Development Law, Cap. 171—Powers, duties and functions under section 12 of the statute—And under section 15 of the Electricity Law, Cap. 170 made applicable to the aforesaid Authority by section 12(3) of Cap. 171 (supra)—Whether the refusal or omission of the respondent Authority to supply electricity to a person who had applied for such supply under section 15 of Cap. 170 (supra) is “ a decision or omission ” of an organ or authority “ exercising executive or administrative authority ” in the sense of paragraph 1 of Article 146 of the Constitution—In determining the question due regard must be had not only to the nature and character of the corporation but also, primarily, to the powers vested in, and duties imposed on, such public corporation and its functions generally, as well as to the particular nature of the decision, act or omission concerned—The nature of the duties and functions of the respondent Authority, particularly when considered in conjunction with its powers to make regulations and its duty to give equal treatment to consumers under section 15 of Cap. 170 (supra) are such as to bring the duty of securing the supply of electricity within the realm of public law—Even if the respondent Authority is, to a certain extent a commercial undertaking—Therefore its refusal or omission to supply to the applicant the electricity asked for is “ decision or omission of an organ, authority or person exercising executive or administrative authority ” in the sense of paragraph 1 of Article 146 of the Constitution—And, consequently, it can be made the subject of a recourse under that Article to the Supreme

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Constitutional Court—Otherwise, as a rule, once the contract has been entered into between the Authority and the consumer—Compliance with the terms and conditions of such contract would, as a rule, come within the realm of private law—And, therefore, it could not be made the subject of the recourse provided by Article 146 of the Constitution.

The applicant in this case applied to the respondent Authority under section 15 of the Electricity Law, Cap. 170 for the supply of electricity. The respondent refused or omitted to accede to his application. Hence the present recourse to the Supreme Constitutional Court under the relevant provisions of Article 146 of the Constitution whereby the applicant attacks the aforesaid refusal or omission on the part of the respondent Authority. The Judge before whom the Presentation of this case was taking place referred to the Supreme Constitutional Court for determination under the proviso to paragraph (2) of rule 9 of the Supreme Constitutional Court Rules the question whether the aforementioned refusal or omission complained of is “a decision or omission of any organ, authority or person exercising executive or administrative authority” in the sense of paragraph 1 of Article 146 of the Constitution and whether, therefore, the Court has jurisdiction to entertain the recourse.

The Court in determining the question in the affirmative :—

Held, (1) in determining whether or not a decision, act or omission of a public corporation, such as the respondent, is “a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority”, in the sense of paragraph 1 of Article 146 of the Constitution, due regard must be had not only to its nature and character but also, primarily, to the powers vested in, and duties imposed on, such public corporation and its functions generally, as well as to the particular nature of the decision, act or omission concerned.

(2) (A) The general functions of the respondent are specifically set out in section 12 of the Electricity Development Law, Cap. 171, which is the legislation under which the respondent is established, and the said section 12 imposes the following duties on the respondent, namely, to—(*Editor's Note* : Enumeration in full of those duties is set out in the judgment of the Court).

(B) Furthermore, section 15 of the Electricity Law, Cap. 170, which, by virtue of the provisions of sub-section (3) of section 12 of Cap. 171, is made applicable to the respondent, provides that a person shall, on application, be entitled to a supply of electricity on the same terms on which any other person in the same area is entitled in similar circumstances to a corresponding supply of electricity and thus introduces an obligation on the respondent to give equal treatment to all applicants for the supply of electricity.

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(3) (A) The nature of the duties and functions of the respondent, particularly when considered in conjunction with the power of the respondent to make regulations and its duty to give equal treatment to all persons, are, in the opinion of the Court, such as to bring the duty of securing the supply of electricity, with which the Court is concerned in this case, within the realm of public law, even if the respondent is, to a certain extent, a commercial undertaking.

(B) Just in the same way as the Court has held in the case of *Stamatiou and the Electricity Authority of Cyprus* (3 R.S.C.C., p. 44) that the provisions of paragraph 1 of Article 125 were such as to bring matters relating to the employees of the respondent within the realm of public law, so the Court is of the opinion that the above-mentioned provisions of Cap. 171 and Cap. 170 are such as to bring the said duty of the respondent to supply electricity, as a public service, within the realm of public law.

(4) Any decision, act or omission of the respondent, therefore, which, *inter alia*, amounts to a failure on its part to perform its aforesaid duty, being within the realm of public law, would be "a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority", in the sense of paragraph 1 of Article 146.

It follows, therefore, that the omission or refusal on the part of the respondent, as alleged in this case, to supply electricity to the applicant concerns the performance of a public law duty of the respondent and can, therefore, be made the subject of a recourse under Article 146 of the Constitution.

(5) It should be added, however, that once a contract has been entered into between the respondent and a consumer of electricity, the compliance, by the parties thereto, with its

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terms and conditions would, as a rule, come within the realm of private law and thus not be the subject of a recourse under Article 146 of the Constitution.

Question referred to the Court answered and determined in the affirmative.

Cases referred to :

Stamatiou and the Electricity Authority of Cyprus 3 R.S.C.C. 44, reasoning followed.

Decision on legal issue reserved under rule 9 (2) of the Supreme Constitutional Court Rules.

Ph. N. Clerides with *A. Triantafyllides* for applicant.

G. P. Cacoyannis for respondent.

Cur. adv. vult.

On the 8th March, 1963, the following judgment was delivered :—

The order

The Court declares :

The Court has jurisdiction under Article 146 to entertain this recourse.

The issue to be determined

The Judge, before whom the Presentation of this Case is taking place, has, on the 22nd November, 1962, referred to the Court, under the proviso to paragraph (2) of rule 9 of the Court's Rules, the following legal issue for determination :—

“ Whether, as regards the matters complained of in the recourse, the Respondent was acting in the capacity of an ‘ organ, authority or person, exercising any executive or administrative authority ’, in the sense of paragraph 1 of Article 146 of the Constitution and whether, therefore, the Court has jurisdiction to entertain the recourse.”

Arguments by counsel on the above legal issue were heard by the Court on the 22nd January, 1963, and the Decision of the Court thereon was reserved until today.

Reasons

In determining whether or not a decision, act or omission of a public corporation, such as the Respondent, is “ a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority ”, in the sense of paragraph 1 of Article 146 of

the Constitution, due regard must be had not only to its nature and character but also, primarily, to the powers vested in, and duties imposed on, such public corporation and its functions generally, as well as to the particular nature of the decision, act or omission concerned.

The general functions of the respondent are specifically set out in section 12 of the Electricity Development Law, CAP 171, which is the legislation under which the respondent is established, and the said section 12 imposes the following duties on the respondent, namely, to—

- (a) generate electricity and to maintain and work installations and undertakings of the respondent ;
- (b) secure the supply of electricity at reasonable prices ;
- (c) carry on any business usually associated with an electricity undertaking ;
- (d) promote and encourage the use of electricity and especially the use thereof for agricultural, industrial and manufacturing purposes ;
- (e) promote and encourage the development of the natural resources of the Republic in connection with the generation of electricity ;
- (f) make regulations in accordance with the provisions of Cap. 171 ;
- (g) advise the Government on all matters relating to the generation, transmission, distribution and use of electricity.

Furthermore, section 15 of the Electricity Law, Cap. 170, which, by virtue of the provisions of sub-section (3) of section 12 of Cap. 171, is made applicable to the respondent, provides that a person shall, on application, be entitled to a supply of electricity on the same terms on which any other person in the same area is entitled in similar circumstances to a corresponding supply of electricity and thus introduces an obligation on the respondent to give equal treatment to all applicants for the supply of electricity.

The nature of the duties and functions of the respondent, particularly when considered in conjunction with the power of the respondent to make regulations and its duty to give equal treatment to all persons, are, in the opinion of the Court, such as to bring the duty of securing

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the supply of electricity, with which the Court is concerned in this Case, within the realm of public law, even if the respondent is, to a certain extent, a commercial undertaking.

Just in the same way as the Court has held in the Case of *Stamatiou and the Electricity Authority of Cyprus* (3 R.S.C.C., p. 44) that the provisions of paragraph 1 of Article 125 were such as to bring matters relating to the employees of the respondent within the realm of public law, so the Court is of the opinion that the above-mentioned provisions of Cap. 171 and Cap. 170 are such as to bring the said duty of the respondent to supply electricity, as a public service, within the realm of public law.

Any decision, act or omission of the respondent, therefore, which, *inter alia*, amounts to a failure on its part to perform its aforesaid duty, being within the realm of public law, would be “a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority”, in the sense of paragraph 1 of Article 146.

It follows, therefore, that the omission or refusal on the part of the respondent, as alleged in this Case, to supply electricity to the applicant concerns the performance of a public law duty of the respondent and can, therefore, be made the subject of a recourse under Article 146 of the Constitution.

It should be added, however, that once a contract has been entered into between the respondent and a consumer of electricity, the compliance, by the parties thereto, with its terms and conditions would, as a rule, come within the realm of private law and thus not be the subject of a recourse under Article 146 of the Constitution.

For the *Reasons* given above the Court declares as stated in *The Order* and the Presentation will now resume its course under the Court's Rules.