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THE GREEK  
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ETC.  
and  
NICOS A.  
NICOLAIDES

\ [ZEKIA, P., VASSILIADES, MUNIR, JOSEPHIDES, JJ.]

THE GREEK REGISTRAR OF THE CO-OPERATIVE  
SOCIETIES AND/OR THE COMMISSIONER AND  
GREEK REGISTRAR OF CO-OPERATIVE  
SOCIETIES,

*Appellant (Respondent),*

and

NICOS A. NICOLAIDES,

*Respondent (Applicant).*

*(Revisional Jurisdiction Appeal No. 1).*

*Administrative Law—Co-operative Credit Societies—Exercise of power of dismissal of officers under rule 89 of the Co-operative Societies Rules—An act or decision under rule 89 is an act or decision in the domain of public law and therefore, subject to the competence under Article 146 of the Constitution of the Republic—Presumed acceptance by Applicant, as part of his tenure of office, of the power under rule 89, does not prevent him from testing the validity of the exercise of such power by proceedings under Article 146.*

*Administrative Law—Public and private Law—Dismissal of an officer of a co-operative society under rule 89 of the Co-operative Societies Rules, an “act” or “decision” within the domain of public law and not of private law.*

*Constitutional Law—Constitution of Cyprus, Article 146—Exercise of power of dismissal of an Officer under rule 89 of the Co-operative Societies Rules an executive or administrative act within the meaning of such Article—Presumed acceptance by Applicant of the said power under rule 89, —No bar to the filing of a recourse under Article 146, for testing the validity of the exercise of such power.*

This is an appeal from a Ruling of a Judge of the Supreme Court, which was made on the 9th February, 1965\*, in the course of the hearing by him of Application No. 241/63, being a recourse under Article 146 of the Constitution.

The learned Judge in his said Ruling was determining

\*.Note: Ruling published post at p. 172.

the following two legal objections which had been raised by the Appellant (who is the Respondent in the said recourse), and which, with the consent of both counsel, were being determined as preliminary legal issues:

“(1). That the decision of Respondent to dismiss Applicant is not an executive or administrative act within the meaning of Article 146 of the Constitution.

“(2) That the Applicant, by accepting employment, has entered into a legal relationship with Respondent, one of the terms of which was the power of dismissal exercised by Respondent”.

The Appellant (Respondent) now appeals from the said Ruling to this Court on the following three grounds:

“(a) The Honourable Court wrongly ruled that the decision of Respondent to dismiss Applicant lies within the domain of public law and as such falls within the provisions of Article 146 of the Constitution of the Republic of Cyprus.

“(b) The Ruling of the Honourable Court that Applicant though accepting to serve with a co-operative Institution he did not enter into such legal relations with Respondent so as to accept the right of dismissal to the Respondent by virtue of the Co-operative Societies Law, Cap. 114, and the regulations made under it, is wrong in law because among other points it is contrary to the spirit and the letter of the decisions of the Supreme Constitutional Court in the Case *Petrou v. The Karpashia New Co-operative Credit Society* (3 R.S.C.C., p. 58), *the Co-operative Grocery of Vasilias v. Ppirou* (4 R.S.C.C., p. 12).

“(c) Taking into account all the circumstances of the Case the Honourable Court should have arrived at the conclusion that it had no jurisdiction to hear the recourse of the Applicant”.

*Held*, (1) This Court sees no reason for differing from the opinion expressed by the learned Judge in his Ruling that the function of Respondent (Appellant) under rule 89 is one which “has as its primary object the promotion of a public purpose viz. the proper functioning of co-operative societies. Such an object has been treated

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as a characteristic of an act or decision in the domain of public law in *Valana and the Republic* (3 R.S.C.C. p. 91).

(2) Likewise, in this case, whatever the general or predominant character of the Greek Registrar of Co-operative Societies might be—and as pointed out by the learned Judge in his Ruling the Respondent in exercising the power in question vested in him by rule 89 was, in this instance, doing so “as an organ of government”, with which view we agree—and whatever the general or predominant character of co-operative societies themselves generally might be, all these factors are only relevant for the purposes of deciding whether, in relation to the particular function which is the subject-matter of these proceedings (namely, the exercise of the power of dismissal under rule 89), the Registrar was acting, in that instance, in the capacity of an “organ, authority or person, exercising executive or administrative authority” in the sense of paragraph 1 of Article 146.

(3) We agree with the conclusion reached by the learned Judge, and with his reasoning for doing so, “that an act or decision of the Respondent under rule 89, having as its primary object the promotion of a public purpose, being a unilateral authoritative pronouncement and being, also an instance of governmental control of co-operative societies, is an act or decision in the domain of public law and subject to the competence under Article 146”.

(4) We also agree with the learned Judge that preliminary objection (2) cannot likewise be sustained for the reasons given by him in his Ruling\*.

(5) We therefore, consider that this appeal cannot succeed and it is accordingly dismissed with costs.

*Appeal dismissed with costs.*

Cases referred to:

*Elias Petrou and others and The New Co-operative Credit Society of Karpashia*, (3 R.S.C.C. p. 58 at p. 59);

*Co-operative Grocery of Vasilias and Haralambos N. Ppirou and others* (4 R.S.C.C. p. 12 at p. 19);

\*Note: Ruling published post, at p. 172.

*Valana and the Republic* (3 R.S.C.C. p. 91);  
*John Stamatiou and The Electricity Authority of Cyprus*  
(3 R.S.C.C. p. 44, at pp. 45-46).  
*Hadji Kyriacou and Hadji Apostolou* (3 R.S.C.C. p. 89 at  
p. 90);  
*Rossides and the Republic* (3 R.S.C.C. p. 95 at p. 97);  
Decisions 566 of 1934, 1149 of 1939 and 191 of 1931 of  
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### Appeal.

Appeal against a ruling of a Judge of the Supreme Court of Cyprus (Triantafyllides J.) (Revisional Jurisdiction Case No. 241/63) made on the 9th February, 1965, in the course of a hearing of a recourse under article 146 of the Constitution whereby two legal objections raised by appellant were determined as preliminary legal issues.

*L. Clerides*, for the appellant.

*Fr. Markides*, for the respondent.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Munir.

MUNIR, J.: This is an appeal from a Ruling of a Judge of the Supreme Court, which was made on the 9th February, 1965, in the course of the hearing by him of Application No. 241/63, being a recourse under Article 146 of the Constitution.

The learned Judge in his said Ruling was determining the following two legal objections which had been raised by the Appellant (who is the Respondent in the said recourse), and which, with the consent of both counsel, were being determined as preliminary legal issues:

“(1). That the decision of Respondent to dismiss Applicant is not an executive or administrative act within the meaning of Article 146 of the Constitution.

“(2). That the Applicant, by accepting employment, has entered into a legal relationship with Respondent,

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one of the terms of which was the power of dismissal exercised by Respondent”.

The learned Judge, for the reasons given in his Ruling, came to the conclusion that “an act or decision of the Respondent under rule 89, having as its primary object the promotion of a public purpose, being an unilateral authoritative pronouncement and being, also, an instance of governmental control of co-operative societies, is an act or decision in the domain of public law and subject to the competence under Article 146”, and, having ruled that neither of the two above-mentioned preliminary objections could be sustained, directed that the recourse should proceed to trial on the remaining issues.

The Appellant (Respondent) now appeals from the said Ruling to this Court on the following three grounds:—

“(a) The Honourable Court wrongly ruled that the decision of Respondent to dismiss Applicant lies within the domain of public law and as such falls within the provisions of Article 146 of the Constitution of the Republic of Cyprus.

“(b) The Ruling of the Honourable Court that Applicant though accepting to serve with a Co-operative Institution he did not enter into such legal relations with Respondent so as to accept the right of dismissal to the Respondent by virtue of the Co-operative Societies Law, Cap. 114, and the regulations made under it, is wrong in law because among other points it is contrary to the spirit and the letter of the decisions of the Supreme Constitutional Court in the Case *Petrou v. The Karpashia New Co-operative Credit Society* (3 R.S.C.C., page 58), the *Co-operative Grocery of Vasilias v. Ppirou* (4 R.S.C.C., page 19-20).

“(c) Taking into account all the circumstances of the Case the Honourable Court should have arrived at the conclusion that it had no jurisdiction to hear the recourse of the Applicant”.

The first submission of counsel for Appellant was that co-operative societies registered under the Co-operative Societies Law, Cap. 114, are not authorities exercising “executive or administrative authority” in the sense of Article 146 and that matters concerning such co-operative societies

fall within the realm of private law and not within the realm of public law. In support of this submission counsel cited the case of *Elias Petrou and others of Karpashia* and *The New Co-operative Credit Society of Karpashia*, (3 R.S.C.C. p.58 at p.59) in which the Supreme Constitutional Court held that "Co-operative societies registered under Cap. 114 are associations of persons for the promotion of the economic interest of their members and, unless otherwise provided, are not, by their very nature, authorities exercising 'executive or administrative authority', in the sense of Article 146" and that the particular decision of the co-operative society which was the subject-matter of that recourse was not "a decision of an authority 'exercising any executive or administrative authority', in the sense of Article 146". In support of this contention counsel for Appellant also cited the Case of the *Co-operative Grocery of Vasilias and Haralambos N. Ppirou and others* (4 R.S.C.C., p. 12 at p. 19) and the case of *Valana and the Republic* (3 R.S.C.C., p. 91). In this connection counsel for Appellant also referred the Court to Kyriakopoulos on Greek Administrative Law, 4th edition, volume II at pp. 219, 221-223 and 227, and also referred to the Decisions of the Greek Council of State Nos. 566 of 1934, 1149 of 1939, and 191 of 1931 (Conclusions from the Jurisprudence of the Greek Council of State, 1929 to 1959, p. 126).

The above authorities cited by learned counsel for Appellant, and particularly the decision of the Supreme Constitutional Court in the case of *Elias Petrou and others of Karpashia* and *The New Co-operative Credit Society of Karpashia* (cited supra), might have been more to the point had the case before us been concerned with an act or decision of a co-operative society. In this case, however, the decision which is the subject-matter of this recourse and consequently of this appeal is not the act or decision of a co-operative society but is a decision of the Greek Registrar of Co-operative Societies. The point in issue in this case, therefore, is not the nature or character of a particular act or decision of a co-operative society, as such, but the nature or character of the particular decision in question of the Greek Registrar of Co-operative Societies, which he took, in exercise of the powers vested in him by rule 89 of the Co-operative Societies Rules, when he decided to dismiss the Respondent (Applicant in Case No. 241/63) from the office of secretary of the Co-operative Society of the Kyrenia Co-operative Union

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Counsel for Appellant subsequently referred in his argument to the dual capacity of legal persons and cited again from Kyriakopoulos on Greek Administrative Law, 4th Edition, volume II, p. 227, and drew an analogy between the Agricultural Bank of Greece, some of the functions of which (e.g. its ordinary banking business) come within the realm of private law while certain other functions might come within the realm of public law. In this connection counsel for Appellant also referred to cases cited in the Digest of Decisions of the Greek Council of State, 1929 to 1959, at p. 126.

Counsel for Respondent (Applicant in Case No. 241/63) was only called upon by this Court to address it on the question of the status and character of the office of the Greek Registrar of Co-operative Societies and the nature and character of the particular decision in question taken by the said officer under rule 89 of the Co-operative Societies Rules. Counsel for Respondent submitted at the outset that in paragraph 3 of the letter No. 20/44 of the 21st October, 1963, addressed by the Greek Registrar of Co-operative Societies to the Respondent (Applicant) (*Exhibit 2*), the Registrar himself must be taken as conceding that he was treating the question of the proposed dismissal of the Respondent (Applicant) as a matter coming within the realm of public law. Counsel for Respondent also referred to Kyriakopoulos on Greek Administrative Law, 4th Edition, volume II at p. 158 and to various other authorities.

In the opinion of the Court it is primarily the nature and character of a particular act or decision which determines whether or not such act or decision comes within the scope of paragraph 1 of Article 146 of the Constitution. Such an issue is one which must be decided on the merits and in the circumstances of each particular case and having due regard to such relevant factors as the office and status of the organ, authority, person or body performing such act or taking such decision, as well as to the circumstances and context in which such act was performed or decision taken. As pointed out by the learned Judge in his Ruling (at p. 16 of the appeal record) the "same organ may be acting either in the domain of private law or in the domain of public law, depending on the nature of its action". Ultimately, what is the important and decisive factor in this respect is the nature and cha-

acter of the particular function which is the subject-matter of a recourse.

The particular decision, which is the subject-matter of these proceedings, was one taken under paragraph (1) of rule 89 of the Co-operative Societies Rules, which provides, inter alia, that—

“..... the Registrar may by order under his hand remove any member of the committee or council or any officer of the registered society who in his opinion is unfit to discharge the duties of his office”.

Having given careful consideration to all that has been said on behalf of the Appellant by his learned counsel as well as to the authorities cited by him, this Court sees no reason for differing from the opinion expressed by the learned Judge in his Ruling (at p. 16 of the appeal record) that the function of Respondent (Appellant) under rule 89 is one which “has as its primary object the promotion of a public purpose viz. the proper functioning of co-operative societies. Such an object has been treated as a characteristic of an act or decision in the domain of public law in *Valana and the Republic*” (cited supra).

As has been pointed out by the Supreme Constitutional Court in its Decision in the Case of *John Stamatiou and The Electricity Authority of Cyprus* (3 R.S.C.C., p. 44, at pp. 45-46)

“Whatever the general and predominant character of the Respondent might precisely be it is only relevant for the purposes of this case to consider whether, in relation to the particular function which is the subject-matter of this 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”.

Likewise, in this case, whatever the general or predominant character of the Greek Registrar of Co-operative Societies might be—and as pointed out by the learned Judge in his Ruling (p. 17 of the appeal record) the Respondent in exercising the power in question vested in him by rule 89 was, in this instance, doing so “as an organ of government”, with which view we agree—and whatever the general or predominant character of co-operative societies themselves generally

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might be, all these factors are only relevant for the purposes of deciding whether, in relation to the particular function which is the subject-matter of these proceedings (namely, the exercise of the power of dismissal under rule 89), the Registrar was acting, in that instance, in the capacity of an "organ authority or person, exercising executive or administrative authority" in the sense of paragraph 1 of Article 146.

We agree with the conclusion reached by the learned Judge, and with his reasoning for doing so, "that an act or decision of the Respondent under rule 89, having as its primary object the promotion of a public purpose, being a unilateral authoritative pronouncement and being, also, an instance of governmental control of co-operative societies, is an act or decision in the domain of public law and subject to the competence under Article 146".

We also agree with the learned Judge that preliminary objection (2) cannot likewise be sustained for the reasons given by him in his Ruling.

We, therefore, consider that this appeal cannot succeed and it is accordingly dismissed with costs.

*Appeal dismissed with costs.*

The following is the ruling appealed from:

TRIANTAFYLIDIS, J.: In this Case the Applicant applies for a declaration that the decision of Respondent, as contained in a letter dated the 6th November, 1963, is *null and void*.

By the said decision Respondent dismissed Applicant from the office of secretary of a co-operative society and terminated his membership on the committees of a number of other co-operative societies.

By an Opposition of the 2nd January, 1964, the following two legal objections were raised, *inter alia*:—

(1) That the decision of Respondent to dismiss Applicant is not an executive or administrative act within the meaning of Article 146 of the Constitution.

(2) That the Applicant, by accepting employment, has entered into a legal relationship with Respondent, one of

the terms of which was the power of dismissal exercised by Respondent.

The above two legal objections of counsel for Respondent were heard, on the 25th January, 1965, with the consent of both counsel, as preliminary legal issues.

It is common ground that the Respondent in this Case has acted, in dismissing Applicant as above, under rule 89 of the Co-operative Societies Rules, under which he may remove any member of the committee or council or any officer of a society, who in his opinion is unfit to discharge the duties of his office.

The said Rules were made under section 54 of the Co-operative Societies Law Cap. 114 and particularly rule 89 is clearly related to the rule-making power under section 54(2)(j).

In determining preliminary objection (1) I have to decide whether the exercise of the particular power, under rule 89, has resulted in a decision or act in the domain of public law or in the domain of private law. If the latter is the case then it is clear that no recourse lies under Article 146, in view of the nature of the competence under such Article. (See *Hadji-Kyriacou and HadjiApostolou*, 3 R.S.C.C. p. 89 at p. 90 and *Valana and The Republic*, 3 R.S.C.C., p. 91 at p. 93).

The same organ may be acting either in the domain of private law or in the domain of public law, depending on the nature of its action. This is clearly stated in the aforesaid two cases of *HadjiKyriacou* and *Valana* and has been, also, recognised under the jurisprudence of the Greek Council of State. (See Conclusions from the Jurisprudence of the Council of State, 1929-1959, p. 126).

The function of Respondent under rule 89 is one which, in my opinion, has as its primary object the promotion of a public purpose viz. the proper functioning of co-operative societies. Such an object has been treated as a characteristic of an act or decision in the domain of public law in *Valana and the Republic* (above).

An order made under rule 89 is, also, a unilateral authoritative pronouncement and thus it possesses another of the essential characteristics of an administrative act. (See Forsthoff on the Administrative Act (1963) p. 6).

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It is rather significant that in Greece the supervision and control of agricultural co-operatives, which has been entrusted to the Agricultural Bank, is being regarded as a matter of public administration. (See Conclusions from the Jurisprudence of the Council of State, 1929-1959, p. 126, and Decision 191/1931 of the Greek Council of State).

I have, of course, borne in mind that the legislation in Greece concerning co-operative societies is not the same as our own, but I do not think that anything should turn on such a difference, because what we are concerned with is the true juridical nature of action of a certain kind to be determined on the basis of general principles of law and not as a result of specific provisions.

As stated by Kyriakopoulos on Greek Administrative Law, 4th edition, volume II, p. 158, the aforesaid supervision and control is exercised by the Agricultural Bank by unilateral acts compulsory for the co-operatives; in this respect a close similarity exists with the nature of decisions or acts under our own rule 89.

Furthermore, the power under rule 89 is, in its true nature, a power exercised by Respondent as an organ of government, in controlling co-operative societies. Such power of control has been granted by Article 89 of the Constitution to the Communal Chambers—in the particular case to the Greek Communal Chamber—and as a matter of fact the said Chamber by Law 7/61, enacted under Article 87 (1) (h), has provided for an Office of Co-operative Development with the Respondent at its head.

For all the above reasons I have reached the conclusion that an act or decision of the Respondent under rule 89, having as its primary object the promotion of a public purpose, being an unilateral authoritative pronouncement and being, also, an instance of governmental control of co-operative societies, is an act or decision in the domain of public law and subject to the competence under Article 146.

Counsel has referred me, in argument, to the judgment in *Petrou and the New Co-operative Credit Society of Karpashia*, (3 R.S.C.C. p. 58). It was submitted that, in view of the nature of co-operative societies, it had been laid down in the said judgment that express provision was required to place a matter connected with co-operative societies in the domain

of public law. In my opinion the said case is clearly distinguishable because what was involved therein was a function of a co-operative society itself, viz. in relation to the admission of members, whereas in this case what is involved is a function of an organ exercising control over co-operative societies. Admission of members to a society is by its very nature a matter of private law, whereas an order under rule 89 is by its very nature a matter in the domain of public law; therefore, no legislative provision is required to place it in such domain.

Preliminary objection (2) cannot be sustained either, in view of the reasons given hereinafter.

There is no doubt that, as held also in *The Co-operative Grocery of Vasilias Ltd. and Ppirou*, (4 R.S.C.C. p. 12 at pp. 19-20), anybody who accepts employment with a co-operative society, such as Applicant, must be presumed to have entered voluntarily into a legal relationship. I agree that, as with section 53 of Cap. 114 in the said case, similarly rule 89 in the present Case must be deemed to have formed part of the terms of such relationship. But the matter cannot be carried further than that and it cannot, thus be held that it has been accepted as part of such legal relationship that any order made under rule 89 shall be immune from proper judicial control. Such a term, moreover, whether express or implied, would have been invalid in view of direct conflict with Article 146, whereas in the above-referred to case of *The Co-operative Grocery of Vasilias Ltd.*, what was involved was not immunity from judicial control but the validity of the procedure of arbitration, under section 53 of Cap. 114, and it was found that it was not contrary to Article 30 of the Constitution.

In this respect it is relevant to refer to the case of *Rossides and the Republic*, (3 R.S.C.C. p. 95 at p. 97). In that case it was indeed held that the enactment of Article 125 of the Constitution could not confer greater security of tenure on an employee of the Electricity Authority than what he enjoyed before the coming into operation of the Constitution but it was not held then—and it could not have been held—that the mere fact that the employment of the employee concerned could be terminated in a certain way, viz. by the giving of a month's notice, precluded him from having a recourse to this Court under Article 146. Likewise in the present Case it cannot be held that the presumed acceptance

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by Applicant, as part of the terms of his tenure of office, of the power under rule 89, prevents him from testing the validity of the exercise of such power by proceedings under Article 146.

For the above reasons it is directed that this recourse should proceed to trial on the remaining issues.

*Order as above.*