[TRIANTAFYLLIDES, J.]

1965
Jan. 25,
Feb. 9,
Oct. 8, 15, 16, 21,
25,
Nov. 9,
Dec. 8

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

NICOS A. NICOLAIDES,

Applicant,

and

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

Respondent.

(Case No. 241/63).

NICOS A. NICOLAIDES *and* THE GREEK REGISTRAR OF THE CO-OPERATIVE SOCIETIES AND/OR THE COMMISSIONER AND GREEK REGISTRAR OF CO-OPERATIVE SOCIETIES

Administrative Law—Co-operative Credit Societies—Co-operative Societies Rules, rules 40 and 89—Applicant's recourse against Respondent's decision, taken under rule 89 of the Rules, to dismiss him from the offices of Secretary of the Kyrenia Co-operative Carob Marketing Union Ltd. and of member of the Committees of five other Co-operative Societies—Allegations that dismissal made out of improper motives of personal enmity and in abuse of the relative powers.

Administrative Law—Validity of administrative acts or decisions—Respondent's decision to dismiss Applicant from offices held by him in Co-operative Credit Societies—Decision annulled because of the absence of an essential step in the administrative process which is a sine qua non for the validity of any administrative act or decision, i.e. decision reached without having taken place the inquiry reasonably necessary for the purpose of ascertaining fully all the relevant facts.

Applicant seeks the annulment of the decisions of Respondent, taken under rule 89 of the Co-operative Societies Rules and contained in a letter dated the 6th November, 1963, by virtue of which he has been dismissed from the offices of Secretary of the Kyrenia Co-operative Carob Marketing Union Ltd. and of member of the Committee of five other Co-operative Societies.

Early in October, 1963, the Respondent received information that, when Applicant happened to come from Kyrenia, to Nicosia for the purpose of attending on one and the same day Committee meetings of two different

Societies, he used to collect his travelling and other expenses from both such Societies.

As a result, Respondent caused an investigation from which it appeared that during the years 1961-1963 Applicant attended about 300 meetings of the Committees of various Co-operative Societies and that on 34 occasions during this period he received, in respect of one and the same day, in which he happened to have two Committee meetings, travelling expenses or day-wages from both Societies concerned.

Respondent then wrote to Applicant that in view of his conduct he was not considered to be a person fit to hold office in the Co-operative movement and that it was intended to dismiss him, but that before doing so Respondent wished to have Applicant's explanations in the matter. By another paragraph of the same letter Applicant was being given the option of resigning within 10 days, and he was informed that in such case no further steps would be taken in the matter.

The Applicant replied on the 30th October, 1963. He refuted any suggestion of improper conduct on his part and refused to resign.

Then on the 6th November, 1963, Respondent wrote to Applicant a letter by which he dismissed him from all his offices in the Co-operative movement.

Hense the present recourse.

Held, I. On Applicant's allegation that he was dismissed by the Respondent out of improper motives of personal enmity.

The allegation of Applicant that Respondent dismissed him out of improper motives of personal enmity, abusing his powers for the purpose, has not been established to my satisfaction, in the least. I am quite satisfied that Respondent took the decision to dismiss Applicant in a *bona fide* effort to preserve proper standards of integrity among officers and Committee members in the Co-operative movement.

II. On the existense or not of a misconception.

It is most propable, bordering on certainty, that the view

that Applicant, in the matter of the expenses in question has acted fraudulently, is a misconception. It follows, therefore, that Respondent has acted on the strength of a most material misconception in dismissing Applicant from all his offices in the Co-operative movement, as a person unfit to hold any office therein and as a person who on the strength of the past practice in such matters had to be dismissed.

III. On the absence of sufficient enquiry and the failure to take into account all relevant considerations.

The failure to carry out an investigation into all relevant circumstances renders the *sub judice* decision of Respondent a decision reached without having taken place the inquiry reasonably necessary for the purpose of ascertaining fully all the relevant facts and, therefore, because of the absence, thus, of an essential step in the administrative process which is a *sine qua non* for the validity of any administrative act or decision the *sub judice* decision of Respondent has to be annulled.

Photiades and The Republic, (1964) C.L.R. 102 and *Roditis etc. and The Republic* (reported in this Part at p. 230 *ante*) followed.

IV. Moreover, such failure amounts also to a failure to pay due regard to most material considerations viz. the actual circumstances of the payments to Applicant made on the 34 occasions and, thus, the relevant discretion of Respondent has been exercised in a defective manner, leading to the invalidity of the *sub judice* decision on this ground too.

Saruhan and The Republic, 2 R.S.C.C. p. 133 and *Constantinou and The Republic,* (reported in this Part at p. 96 *ante*) followed.

V. As a result the decision of Respondent complained of is annulled.

VI. As regards costs.

I have decided to award Applicant only £45.- towards costs.

Sub judice decision declared null and void.

Cases referred to:

Demetriou Ice and Cold Stores Co. Ltd. and The Republic, (reported in this Part at p. 361 *ante*);

Photiades and The Republic 1964 C.L.R. 102;

Constantinou and The Republic, (reported in this Part at p. 96 ante);

Roditis etc. and The Republic (reported in this Part at p. 230 *ante*);

Saruhan and The Republic, 2 R.S.C.C. 133.

Recourse.

Recourse against the decision of Respondent, taken under rule 89 of the Co-operative Societies Rules, by virtue of which applicant was dismissed from the office of Secretary of the Kyrenia Co-operative Carob Marketing Union Ltd. and of member of the committees of five other Co-operative Societies.

Fr. Markides with Chr. Demetriades for the applicant.

L. Clerides for the respondent.

Cur. adv. vult.

The facts of the case sufficiently appear in the following judgment delivered by:—

TRIANTAFYLLIDES, J.: In this recourse the Applicant seeks a declaration that the decision of Respondent, taken under rule 89 of the Co-operative Societies Rules and contained in a letter dated the 6th November, 1963, (*exhibit* 1), by virtue of which he has been dismissed from the offices of Secretary of the Kyrenia Co-operative Carob Marketing Union Ltd. (vide paragraph 1 of *exhibit* 1) and of member of the Committee of five other Co-operative Societies, (vide paragraphs 2, 4, 5, 7 and 8 of *exhibit* 1), is *null* and *void* and of no effect whatsoever.

The history of events leading up to the decision of Respondent, contained in *exhibit* 1, is as follows:—

Early in October, 1963, the Respondent received information that, when Applicant happened to come from Kyrenia

to Nicosia for the purpose of attending on one and the same day Committee meetings of two different Societies, he used to collect his travelling and other expenses from both such Societies.

As a result, Respondent called in Mr. Loucas Mavrocordatos, a District Inspector of Co-operation, and asked him to investigate and report back.

Mr. Mavrocordatos prepared a report which is dated the 19th October, 1963, (*exhibit* 22), and from which it appears that during the years 1961-1963 Applicant attended about 300 meetings of the Committees of various Co-operative Societies (vide paragraph (c) of *exhibit* 22) and that on 34 occasions during this period he received, in respect of one and the same day, in which he happened to have two Committee meetings, travelling expenses or day-wages from both Societies concerned (vide paragraph (*a*) of *exhibit* 22).

This report was submitted to Respondent through Mr. Smyrnios, the Senior Co-operative Officer for Nicosia-Kyrenia, who wrote a minute to Respondent dated 21st October, 1963, (*exhibit* 23).

In the said minute he described Applicant's course of conduct as reprehensible and calling for punishment. And he proceeded to add "I understand that he has done this.... with full knowledge and not out of ignorance, out of base motives in order to secure personal financial benefits". Mr. Smyrnios proceeded to suggest that the proper punishment for such conduct was the dismissal of Applicant from all his offices in the Co-operative movement.

On the same day Respondent wrote a note on *exhibit* 23 itself, signifying his agreement.

Respondent then wrote accordingly to Applicant again on the same day, the 21st October, 1963, a letter (*exhibit* 2), with a list attached and containing the dates on which it was alleged that Applicant had collected twice the relevant expenses (*exhibit* 2(*a*)). In such letter Respondent informed Applicant that in view of his conduct he was not considered to be a person fit to hold office in the Co-operative movement and that it was intended to dismiss him, but that before doing so Respondent wished to have Applicant's explanations in the matter. By another paragraph of the same letter Applicant was being given the option of resigning within 10 days,

and he was informed that in such case no further steps would be taken in the matter.

The Applicant replied by *exhibit* 3 on the 30th October, 1963. He refuted any suggestion of improper conduct on his part and refused to resign.

Then on the 6th November, 1963, Respondent wrote to Applicant *exhibit* 1, by which he dismissed him from all his offices in the Co-operative movement, as well as from two offices (vide paragraphs 3 and 6 of *exhibit* 1) which Applicant did not hold at all at the time; during the proceedings it transpired that the holder of such offices was another Nicos Nicolaides.

On the 11th November, 1963, the Kyrenia Co-operative Carob Marketing Union Ltd. wrote to Respondent protesting against the decision of Respondent, contained in *exhibit* 1, to dismiss Applicant from the post of Secretary of such Society, (vide *exhibit* 5). The same Society in December, 1963, filed recourse 243/63 against the said decision of Respondent but later decided to withdraw it.

Also the Kyrenia Co-operative Credit Society, of which Applicant was a Committee member, wrote on the 12th November, 1963, protesting against the decision of Respondent, contained also in *exhibit* 1, to dismiss Applicant from the office of Committee member, (vide *exhibit* 8).

As a result of further steps of the Kyrenia Co-operative Carob Marketing Union Ltd., the Respondent wrote to such Society on the 28th November, 1963, a letter (*exhibit* 6) allowing Applicant to continue acting as the Secretary of this Society on a temporary basis until the completion of certain business in hand.

On the 1st May, 1965, it was decided by the Society concerned, at a meeting held in Nicosia, in the premises of the Department of Co-operation, to terminate Applicant's services as Secretary of the Society, and Respondent, acting under rule 69 of the Co-operative Societies Rules, approved on the same day such decision (vide *exhibits* 26 to 28). This second consecutive dismissal of Applicant from the one and the same post of Secretary of the Kyrenia Co-operative Carob Marketing Union Ltd. is the subject-matter of another recourse pending before this Court, 104/65, and we need not deal with it further in this judgment.

The present Case has been accorded a lengthy hearing and in view of the arguments ably placed before the Court by the counsel for both parties the enquiry of the Court has had to range over quite a number of issues.

It is convenient to dispose at once of one of them:

I find that the allegation of Applicant that Respondent dismissed him out of improper motives of personal enmity, abusing his powers for the purpose, has not been established to my satisfaction, in the least. I am quite satisfied that Respondent took the decision to dismiss Applicant in a *bona fide* effort to preserve proper standards of integrity among officers and Committee members in the Co-operative movement.

There is no doubt that due to their different personalities Respondent and Applicant are persons whom one cannot easily visualize as always co-operating together harmoniously. As a result, Applicant and Respondent were coming into conflict over a variety of issues; but in the same way in which I am, indeed, satisfied that Applicant in disagreeing with Respondent was acting all the time to the best interests—as he saw them—of the Co-operative movement, I am likewise satisfied that Respondent in disagreeing with Applicant had also at heart the best interests—as he saw them—of the Co-operative movement and was acting accordingly. Their conflicts were professional, not personal.

There is no doubt that Respondent took an extremely severe course of action against Applicant because he regarded Applicant's relevant conduct as being dishonest and fraudulent conduct, rendering Applicant an unfit person for the Co-operative movement, altogether. This is abundantly clear from, *inter alia*, paragraph 2(*b*) of the facts pleaded in the Opposition, from Respondent's own evidence and even from the all-embracing nature of the dismissal of Applicant from all his offices, even those held with two Societies (vide paragraphs 1 and 2 of *exhibit* 1) from which he had not received any travelling or other expenses on the dates set out in *exhibit* 2(*a*).

By Applicant's side it has been alleged, on the contrary, that treating Applicant's conduct as fraudulent involved a grave misconception of fact on the part of Respondent.

Misconception of fact—(including erroneous inferences as

to the existence of particular facts)—is accepted in Administrative Law as a ground of annulment of a decision taken as a result thereof; it causes a defective exercise of the relevant administrative discretion, (vide *Demetriou Ice and Cold Stores Co. Ltd. and The Republic*—, reported in this Part at p. 361 ante); Also, in his text-book on the Law of Administrative Disputes (1964), at p. 220, Stasinopoulos explains how misconception as to essential facts leads, in the last analysis, to illegality of the decision or act concerned.

In resolving this issue of the existence or not of a misconception in this Case it is necessary first to examine the material which Respondent had before him in deciding to treat Applicant's conduct in question as fraudulent and to dismiss him, as per *exhibit* 1, from all his offices in the Co-operative movement.

As he said in his own evidence he had before him *exhibits* 22 *and* 23. *Exhibit* 22 was the report of Mr. Mavrocordatos stating the conduct in question of Applicant and *exhibit* 23 was the covering minute of Mr. Smyrnios, by which he forwarded such report, *exhibit* 22, to Respondent; their contents have already been referred to and need not be restated.

Of the two documentary exhibits, on the basis of which Respondent has acted, i.e. *exhibits* 22 *and* 23, *exhibit* 23 is by far the most fatal for Applicant, because there Mr. Smyrnios expressed the view that Applicant had acted with full knowledge and out of base motives for the purpose of personal enrichment, in other words, dishonestly and fraudulently; and Respondent wrote on *exhibit* 23 itself that he was in agreement.

Mr. Smyrnios himself has not been called as a witness to explain on what material he has based such a view. But, bearing in mind that Respondent and his counsel have done everything possible to place, in this Case, all relevant material before the Court, it can be safely assumed that had there existed any other concrete evidence of any real significance, independent of *exhibit* 22, on which Mr. Smyrnios had based his views in *exhibit* 23 regarding the fraudulent conduct of Applicant, it would have been duly adduced before this Court; for the purposes of this judgment, therefore, I shall proceed on the basis that no such other evidence was taken into account at the material time.

It is clear that Respondent did not seek in this matter the views of, or caused any investigation by, the Committees of the Co-operative Societies from which Applicant had received the expenses in question. Respondent had, of course, access to the relevant minutes of the Committees concerned, authorizing the payment of expenses to Committee members such as Applicant (vide *exhibits* 4(*a*), 4(*b*), 10 *and* 11), but the exact circumstances in which, and the practice under which, the various expenses involved had been claimed by—if they were claimed—or paid to Applicant were not made the subject of specific further investigation. Respondent took action at once on receiving *exhibit* 23, to which *exhibit* 22 was attached.

The only other person whom Respondent consulted was the Deputy Commissioner, Mr. Angastiniotis, who advised him against dismissing Applicant; of course, Respondent was not bound to abide by the views of his Deputy, though he took them duly into account.

Respondent has testified that in dismissing Applicant he relied on the fact that Applicant had collected expenses, on certain occasions, twice in respect of the same day, as mentioned in the report of Mr. Mavrocordatos, *exhibit* 22. This was, of course, irregular on the face of it, if the views of Respondent regarding the propriety of such course were to be found to be correct. But such irregularities could be either fraudulent or non-fraudulent depending on the circumstances in which they had occurred, and particularly depending on the relevant "animus" of Applicant at the material time. As Mr. Angastiniotis, when Respondent consulted him, was definitely inclined not to treat the matter as serious, as Respondent did not choose to consult the Committees of the Societies concerned, it is clear that Respondent endorsed fully the views of Mr. Smyrnios, in *exhibit* 23, who regarded Applicant's conduct as fraudulent and recommended his dismissal in the interests of the Co-operative movement. So if it were to be found that the views of Mr. Smyrnios concerning the fraudulent nature of the conduct of Applicant were not be relied upon as factually correct then it would follow that the *sub judice* decision of Respondent was based to a most material extent on a misconception of fact.

The view that the conduct of Applicant was fraudulent has

influenced the decision of Respondent from a different angle, too. Respondent has told the Court that he has relied on the past practice of his Office in deciding to dismiss Applicant from the Co-operative movement. He told the Court that in particular he relied on two precedents which are set out in *exhibit* 21 and *exhibit* 24.

Both *exhibit* 21—especially when looked upon in the light of the evidence of Mr. Angastiniotis who dealt with that matter at the time and whose evidence I accept—and *exhibit* 24 are clearly cases of fraudulent conduct. Likewise, the case of Mr. Kassianides, which was mentioned by Respondent and in which the said official was dismissed for having obtained hotel subsistence expenses on the basis of a false declaration, is, indeed, again, a case of fraudulent conduct. Thus, there can be no doubt that the relevant previous practice relied upon by Respondent was so relied upon because of the view that Applicant's conduct was fraudulent.

In examining the fraudulent or not nature of Applicant's conduct in question the following considerations, *inter alia*, may be usefully borne in mind:—

The Applicant is a person with long service in the Co-operative movement. The fact that he held all the offices from which he was dismissed by *exhibit* 1 is a clear indication of his success in the movement and the esteem which he has gained thereby. Mr. Angastiniotis, who has recently retired after an extremely long service in such movement, has said that he has known Applicant for a long time and has testified to Applicant's integrity and efficiency. I do accept such evidence as reliable and correct.

Respondent himself in giving evidence has stated that he had no reason to dismiss Applicant, other than what is stated in *exhibit* 1 (which, of course, must be read with *exhibit* 2) and he has added that he had never received any complaints against Applicant as Secretary of the Kyrenia Co-operative Carob Marketing Union Ltd., but that Applicant was coming into conflict with his fellow-members, in the Committees of other Societies. Respondent has not in any way thrown any doubt on Applicant's integrity in the past.

The conduct of Applicant which led to his dismissal constitutes conduct in a sphere of which the proper limits do not appear to be indisputably defined.

Counsel for Applicant has submitted that there was nothing in law to prevent Applicant from collecting the full amount payable to a Committee member of a Society, by each one of two Societies the Committee meetings of which Applicant had attended on one and the same day. Earlier, Applicant himself by his letter to Respondent, *exhibit* 3, did in fact raise a claim of right to the same effect.

Respondent on the other hand and his counsel took most strongly the opposite view.

Mr. Angastiniotis in his evidence appeared to take a somewhat middle view to the effect that it was only wrong to collect twice, from different Societies, travelling expenses for the same trip on one and the same day. But even then he was not prepared to regard the matter as being so serious, in the circumstances in which it had occurred, as to warrant the dismissal of Applicant at all.

Moreover, it is common ground that no circular or other direction emanating from the office of the Commissioner of Co-operation was ever issued regulating the matter in question. Mr. Angastiniotis in his evidence said that he actually suggested to Respondent, at the time when they were discussing Applicant's conduct, to issue to all Committees of Societies a relevant directive in order to avoid repetition of the same situation in future.

On Respondent's side reliance has been placed, in this connection, on rule 40 of the Co-operative Societies Rules, which reads as follows:—

> "Members of the committee must be members of the registered society. They shall not receive salary or other remuneration, but they shall be entitled to recover from the registered society such out of pocket expenses as may have been incurred by them in connection with work performed for or on behalf of the registered society to such amount as may be approved by the committee".

The construction of this rule is not entirely free from difficulty, when it is to be applied to a Case like the present which in any case it cannot be said to govern expressly, but only by implication, if at all; such rule lays down what a Committee member may recover from each Society and does not provide expressly for the case where the same person

attends two Committee meetings on one and the same day.

I have not found it necessary to resolve this issue, but even assuming that Respondent's views about the matter were to be upheld, it cannot in my opinion be said with certainty that it was impossible, in the circumstances, for opposite views to have been held in all good faith.

Anyhow, it is useful to note that Applicant's conduct was judged without making allowance in his favour for expenses which, even on the basis of Respondent's views, he was entitled to collect.

Respondent himself has stated very fairly in his evidence that if Applicant had attended a Committee meeting, in respect of which he would collect his travelling expenses for the trip from Kyrenia to Nicosia and back, and then he had to attend a second Committee meeting of another Society, on the same day, which would have entailed further travelling expenses by way of the journey from Nicosia to the offices of such Society and back, Applicant would be entitled to collect from such other Society the extra travelling expenses thus involved.

Yet nowhere in *exhibits* 23 *and* 2 any allowance appears to have been made in relation to occasions, contained in *exhibit* 2(*a*)—and it is not disputed that there were such occasions—when additional travelling expenses, for a second meeting on one and the same day, could properly be received by Applicant, on the basis of the views of Respondent himself; such were the occasions when Applicant had to drive out of Nicosia to the premises of one of the Societies concerned in order to attend a Committee meeting there.

The payments of the various amounts in respect of the Committee meetings which Applicant attended, were being made to Applicant, and the other Committee members, neither by one central co-ordinating authority nor simultaneously with, or soon after, each Committee meeting concerned, but by each Society separately—probably through the Co-operative Central Bank—and at irregular intervals of time in respect of a varying number of past meetings each time.

That this was the practice in the matter has been testified to by Applicant and I do accept his evidence—which in any case has not been disputed on this point at all. That this

was so appears also from *exhibit* 19, where payments made in relation to the Committee meetings of one of the Societies concerned, SOREL, are recorded. The same is borne out by the notes attached to *exhibit* 22.

It must be borne, further, in mind that the occasions, on which Applicant had to attend two Committee meetings of different Societies in Nicosia on one and the same day, were few and exceptional occasions and, therefore, it could hardly be taken for granted that when he received, on a later date, payment in respect of a number of past Committee meetings of a certain Society, he would forthwith correlate such payment with any payment made to him for a Committee meeting of another Society, which had coincided with a Committee meeting of the first Society, on one and the same date.

In this connection I accept Applicant's evidence to the effect that he did not check always—but only occasionally—to see whether what was due to him had been paid to him; and I accept that at least on one occasion, when he did check, he found that he had been overpaid and he refunded the difference.

Actually, Applicant did not seem to be pressing for payment to him of his due in respect of Committee meetings. Until October 1963, when the present matter arose, Applicant had not claimed payment in respect of attending Committee meetings in 1963 of one of the Societies in question, SOPAZ—(vide paragraph (*b*) of *exhibit* 22).

Nor did he always collect in full what was due to him. As it appears clearly from *exhibit* 9, though he has been paid travelling expenses in respect of ten meetings of one of the Societies concerned, the Pancyprian Co-operative Confederation, he received subsistence only in respect of two such meetings; yet under the relevant decision of the Committee of the Confederation (vide *exhibit* 11) he was normally entitled to subsistence for all ten meetings at the rate of 500 mils per meeting.

Also Applicant did, on occasion, incur, without claiming them, expenses for the purpose of promoting the business of Co-operative Societies in which he was involved. In this respect, Applicant has given details by means of *exhibit* 18, which have remained unchallenged until the very end of these proceedings; the fact that it has been shown by means of

exhibit 19, that on other occasions he did claim and receive reimbursement of similar expenses, does not detract from the effect of *exhibit* 18, in denoting Applicant's attitude in the matter of expenses incurred in respect of the business of Co-operative Societies.

In examining the nature of the amounts paid to Applicant for his attendances at the Committee meetings of the various Societies concerned, I do not think, on the material before me, that it is proper to attach too much importance to how they are described in the relevant Committee decisions on the strength of which they were being paid. Apart from instances where travelling expenses are provided for therein on a per mile ratio, (vide *exhibits* 4(*a*) *and* 11), lump sums of £1.-, as in the case of SOPAZ, (vide *exhibit* 4(*b*), or £1,250 mils, as in the case of SOREL, (vide *exhibit* 10), whether described as "expenses" or "travelling expenses", should be looked upon as representing an overall payment made in respect of all expenses involved in attending a Committee meeting. Such a view is supported also by the evidence of Mr. Angastiniotis.

With the exception of six occasions which are dealt with in the next paragraph, on none of the other occasions of double payments set out in *exhibit* 2(*a*) did Applicant receive from two Societies travelling expenses on a per mile ratio for the same trip on one and the same day.

On six occasions, however, Applicant did receive travelling expenses on a per mile ratio from two Societies—the Co-operative Central Bank and the Pancyprian Co-operative Confederation—in respect of the same round trip from Kyrenia to Nicosia and back, on one and the same day, having come to Nicosia to attend meetings of their Committees which coincided on the same dates. Such dates relate to the period from the 27th July, 1961 to the 30th November, 1961, both dates inclusive.

In relation to these six occasions it is necessary to point out, first, that one of the relevant dates, as it is set out in *exhibit* 2(*a*), is erroneous: The 29th August, 1961, should have read 29th September, 1961. This is abundantly clear from the list of dates attached to *exhibit* 22—*exhibit* 22(*a*)—from which *exhibit* 2(*a*) was apparently copied; it appears that the corresponding date there was also originally stated as 29th August, 1961, but later it was corrected, in red pencil,

to 29th September, 1961, which a perusal of the relevant notes attached to *exhibit* 22—*exhibit* 22(*b*)—shows indeed to be the correct date.

It is very significant to note, in relation to the issue of the existence of the fraudulent intent of Applicant, that all these six occasions are among the ten dates to which exhibit 9 relates; as already stated earlier in this judgment, Applicant received in respect of such dates only his travelling expenses, and not also—except for two of them—the subsistence which he was entitled to receive from the Confederation. So, for at least four out of the aforesaid six occasions—if not for all of them—Applicant did not receive any subsistence from the Confederation but only travelling expenses. The travelling expenses were in Applicant's case 800 mils per trip and the subsistence, slightly less, viz. 500 mils per meeting; so he was not really much better off.

It is further necessary to note in relation to these six occasions the way in which the, already mentioned, staggered manner of payment of the amounts concerned to Applicant could have possibly operated to prevent him from appreciating that he had actually received double travelling expenses. A mere reference to the dates of payments relevant to the six occasions in question, on which Applicant received respectively the travelling expenses concerned, will show this: Applicant was paid travelling expenses by the Confederation for the said six occasions (which it must be remembered were spread over a period from the 27th July, 1961 to the 30th November, 1961) on the 24th April, 1962, by means of *exhibit* 9. On the other hand he had been paid the travelling expenses for the corresponding dates, by the Co-operative Central Bank, by means of payments made to him (as shown in blue 103 in *exhibit* 22(*b*)) on different dates between the 3rd August, 1961, and the 7th December, 1961, and each time together with other travelling expenses due to him in respect of other Committee meetings of the Bank, which had not coincided with Committee meetings of other Societies on the same dates.

And, of course, the same method of staggered and belated payments of expenses could have led likewise to double payments being accepted unwittingly on other of the occasions of double payments set out in *exhibit* 2(*a*).

Before concluding with the examination of the occasions

of double payments set out in *exhibit* 2(*a*) it is useful to note that in respect of six of them Applicant had not actually been paid twice anything. Such six occasions relate to meetings of the Committee of SOPAZ, in 1963, (from the 4th February, 1963 to the 16th July, 1963) which coincided with meetings of the Committee of the Co-operative Central Bank; Applicant was treated as having fraudulently received his expenses from both the Bank and SOPAZ, merely because Applicant, having received his expenses only from the Bank, appeared to be credited in the books of SOPAZ with the expenses due to him from SOPAZ, which, however, he had not yet collected, (vide *exhibits* 22 *and* 2).

In the light of, *inter alia*, all the foregoing, the time has now come to decide whether treating Applicant's conduct as fraudulent was a misconception of fact.

The burden of proof regarding the existence of such a misconception lies on an applicant who alleges it, because there is a presumption against the existence of such misconception. Such burden is discharged if the misconception is proved to exist or if it is shown that it is most probable that it exists, (vide Stasinopoulos, Law of Administrative Disputes, (1964) p. 222 and Stasinopoulos, Law of Administrative Acts (1951) p. 305).

Moreover, once the applicant in a case succeeds in showing as probable the existence of such a misconception, it is open to an Administrative Court, being in doubt as to the existence of such a misconception, to annul the *sub judice* decision—so as to render possible a re-examination by the administration—rather than to call for further evidence before it for the purpose of resolving such doubt (vide Stasinopoulos (1951), *supra*, p. 305, and also *Photiades and The Republic*, 1964, C.L.R. 102).

In the light of the totality of the material before me, I have reached the conclusion that it is most probable, bordering on certainty, that the view that Applicant, in the matter of the expenses in question has acted fraudulently, in the manner suggested—on the basis of exhibit 22—by Mr. Smyrnios in paragraph 2 of *exhibit* 23, is a misconception. It follows, therefore, that by adopting as he did *exhibit* 23, Respondent has acted on the strength of a most material misconception in dismissing Applicant from all his offices in the Co-operative movement, as a person unfit to hold any

office therein and as a person who on the strength of the past practice in such matters had to be dismissed.

As a result I am bound to annul the decision of Respondent set out in *exhibit* 1.

Even if I were only of the opinion that the existence of the said misconception was not most probable, as I have found it to be, but only so sufficiently probable as to raise a doubt in my mind on the point, then on the basis of the aforementioned principles of Administrative Law, I would still have annulled the sub judice decision of Respondent, thus opening the way for a fresh examination of the matter by Respondent, rather than adopt the alternative course of calling further evidence before me, in an effort to clear up definitely the question of the existence or not of the said misconception. The latter course would have entailed a lengthy and detailed examination into a lot of relevant circumstances and such examination is one that should and could be made more properly in the first instance by Respondent, the officers under him and the Societies concerned.

Though it is hardly necessary to point this out, this is not a case of interference by this Court with the quantum of punishment imposed on Applicant, but it is a case where the decision itself to dismiss Applicant is defective for the reason already explained, (vide *Constantinou and The Republic*, reported in this Part at p. 96 *ante*, which is, also, a case of defective exercise of discretion in a disciplinary matter).

There are further additional, and related, grounds because of which it is necessary in my opinion to annul the *sub judice* decision of Respondent, too.

As already indicated in this judgment, no detailed investigation into the actual circumstances in which the expenses concerned were paid to Applicant, on each of the 34 occasions set out in *exhibit* 2(*a*), appears to have been made. Only an accounting investigation was carried out by Mr. Mavrocordatos (vide *exhibit* 22). Once such investigation was completed, Mr. Smyrnios reached the conclusion that Applicant's conduct was fraudulent; he so reported on the 21st October, 1963 to Respondent who agreed with his views and on the same day addressed to Applicant *exhibit* 2. The only stage at which time was allowed, for the purpose of pondering on the action to be taken, was between receipt by Respondent of

the reply of Applicant (*exhibit* 3) and the decision to dismiss him (*exhibit* 1); as Respondent has put it, he was—and quite rightly so—sleeping over his decision in the matter. But again during this stage it does not appear that any further investigation was carried out into the actual circumstances of each of the payments in question.

Rather indicative of the hurry of the action taken against Applicant is also the fact—already mentioned earlier—that, due merely to an identity of names, Applicant was mistakenly dismissed from office as Committee member of two Societies of which he was not in fact at the time a Committee member.

Without the ascertainment of the actual circumstances, in which on each of the 34 occasions set out in *exhibit* 2 (*a*) the amounts in question were paid to Applicant by the Societies concerned, it was not possible, in my opinion, to reach any proper conclusion on the crucial issue of whether or not Applicant had acted fraudulently; before a decision as to his particular "*animus*" on each occasion could be reached the exact circumstances of each "*actus*" had to be known fully. From the mere fact of a "double" payment and receipt it could possibly be concluded that Applicant had acted irregularly—if what he did was in fact irregular—but it could not also be safely presumed that he acted fraudulently.

The failure to carry out an investigation into the aforesaid circumstances renders the *sub judice* decision of Respondent a decision reached without having taken place the inquiry reasonably necessary for the purpose of ascertaining fully all the relevant facts and, therefore, because of the absence, thus, of an essential step in the administrative process which is a *sine qua non* for the validity of any administrative act or decision the *sub judice* decision of Respondent has to be annulled. (Vide *Photiades and The Republic*, *supra*; also the *Roditou* case, reported in this Part at p. 230 *ante*). Moreover, such failure amounts also to a failure to pay due regard to most material considerations, viz. the actual circumstances of the payments to Applicant made on the 34 occasions set out in *exhibit* 2(*a*), and, thus, the relevant discretion of Respondent has been exercised in a defective manner, leading to the invalidity of the *sub judice* decision on this ground too (vide *Saruhan and The Republic*, 2 R.S.C.C. p. 133; *Constantinou and The Republic*, *supra*).

Of course the extent of the enquiry necessary for, and the

considerations relevant to, the taking of an administrative decision vary according to the circumstances of each particular matter. In the present instance it was most necessary to investigate into the exact circumstances of the payment to Applicant of the amounts in question, on the 34 occasions set out in *exhibit* 2(*a*), before being in a position to reach properly the conclusion that an otherwise honest and efficient leading member of the Co-operative movement, of long standing, had fraudulently received £34.800 mils—this being the total of the amounts allegedly received wrongfully by him between 1961 and 1963 on the basis of *exhibit* 2(*a*), when read in the light of the evidence of Respondent and particularly his evidence relating to *exhibit* 25.

Even if the ground of misconception of fact had been absent, I would still have annulled the *sub judice* decision on the two grounds just dealt with viz. the absence of sufficient enquiry and the failure to take into account all relevant considerations.

For all the several reasons, therefore, set out in this judgment the decision of Respondent set out in *exhibit* 1 is declared to be *null* and *void* and of no effect whatsoever.

It is now up to Respondent to re-examine afresh the matter in the light of this judgment. I am sure that he will spare no effort to go to the bottom of the whole affair because, having, as I am sure he has, at heart the interests of the Co-operative movement he will no doubt be anxious to do the right thing in the light of all the relevant facts.

Respondent would be well advised to, *inter alia*, make absolutely sure that indeed none of Applicant's fellow Committee members has received any double payments of expenses, as Applicant has done. This appears to have been assumed to be so on the basis of the accounting investigation leading up to *exhibit* 22. But all that such investigation has established is that none of Applicant's fellow Committee members had received such payments till the date of *exhibit* 22, the 19th October, 1963. They may well have been paid further expenses since then in respect of past meetings and double payments may have thus resulted; I stress this aspect because such a thing appears possibly to have supervened in the case of Mr. Loucas Kyriacou (vide evidence of Mr. Mavrocordatos) though one cannot be certain about it without further enquiry. If in the end it is found that no

double payments have actually occurred in the case of other Committee members, this factor does not establish *ipso facto* that Applicant in receiving such payments himself has acted fraudulently—because each one's conduct has to be examined on its own merits—but it is a departure point for further investigation into the actual reasons of why and how only Applicant did receive such payments. On the other hand if such double payments are traced eventually to other Committee members it may be an indication that the system of payments is possibly more to blame than the recipients thereof.

I trust that Respondent will not hesitate to do justice to Applicant should he find that Applicant was not to blame in the matter. On the other hand, I might add that my judgment in this Case is not a *res judicata* preventing Respondent from properly finding, on the basis of further material, if any, to be discovered by a more thorough investigation, that Applicant has indeed acted fraudulently in respect of all or any of the 34 occasions in *exhibit* 2(*a*); this judgment has been reached on the basis only of the material available till now and before the Court.

Also, I am leaving entirely open the issue of whether or not Applicant, even if he has not acted fraudulently, has, nevertheless, acted irregularly or improperly and whether or not in such a case he should still be dismissed from all or any of his offices in the Co-operative movement. I am expressing no view at all as to what the new decision of Respondent could or should be.

In view of the decision reached by me, as above, in this judgment and the annulment accordingly of the *sub judice* decision of Respondent, I need not deal with the other issues that have been raised in the present Case by the parties during the proceedings before me; I leave them open.

On the question of costs, taking into account that Respondent, as I have found, has acted in good faith in this matter and that Applicant, on the other hand, has occupied a lot of the Court's time by means of his allegation—which he has failed to establish—that this was a case of personal spite of Respondent towards Applicant, I have decided to award Applicant only £45.- towards costs.

Sub judice decision declared null and void.
Order as to costs as aforesaid.