

(TRIANAFYLLIDES, J)

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MODESTOS SAVVA PITSILLOS (No 1),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1 THE MINISTER OF AGRICULTURE AND
NATURAL RESOURCES,

2 THE MANAGER OF THE WATER BOARD OF
NICOSIA,

Respondents.

(Case No 148/64)

1966
Feb 11,
June 15

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SAVVA PITSILLOS
(No 1)
and
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Administrative and Constitutional Law—Private Law and Public Law—Article 146 of the Constitution—Jurisdiction or competence of the Court thereunder—Contractual relationship—Action taken by the Government by virtue of contracts with citizens—Is a matter of private law and as such it does not fall within the competence of the Court for annulment under Article 146 of the Constitution—Therefore, the decision complained of in this case being a demand made under an agreement cannot be entertained by the Court by way of the recourse under Article 146

Public Law—Private Law—A matter of private law cannot be made the subject of a recourse under Article 146 of the Constitution—See, also, under Administrative and Constitutional Law above

Contracts—Contracts entered into between the Government and the citizens—Action taken by the Government thereunder—A matter of private law outside the ambit of Article 146 of the Constitution—See, also, above

Water Supply—Water Board—Contracts for supply of water entered into between the Board, acting on behalf of the Government, and the citizens—See above.

By this recourse, made under Article 146 of the Constitution, the applicant challenges the validity of the decision of the respondents to demand from him payment of £44,200 mls

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in relation to water supplied to him. Applicant was being supplied with water by virtue of an agreement dated the 9th September, 1958, entered into between the applicant and the Water Board of Nicosia, respondent No. 2, acting on behalf of the then Colonial Government, which has now been succeeded by the Government of the Republic. The demand complained of was made under the said agreement.

The learned Justice upholding the preliminary objection raised by counsel for the respondents to the effect that the matter is outside the ambit of Article 146 of the Constitution :—

Held, (1) we are faced here with the position that applicant complains of an action taken by virtue of an agreement.

(2) It is well settled in Administrative Law that such matters arising out of action taken by the Government under contracts with citizens, are matters of private law, and as such they do not fall within the competence of this Court relating to the remedy by way of recourse for annulment, such as the competence under Article 146 of the Constitution.

(3) It follows that this Court has no competence, under article 146, to entertain the complaint of Applicant.

Application dismissed. Costs in favour of respondent 1 in the sum of £10.

Recourse.

Recourse against the decision of the Respondents to demand from Applicant the sum of £44.200 mils, in relation to water supplied to him.

A. Georghiades for Applicant.

L. Loucaides, Counsel of the Republic, for Respondent No. 1.

A. Triantafyllides for Respondent No. 2.

The following Decision was delivered by:—

TRANTAFYLLIDES, J.: When this Case came up for hearing, counsel for Respondent 1 took two preliminary objections, viz. that this recourse as made against the decision to demand from Applicant payment of £44.200 mils, in relation to water supplied to him, is out of time, and, secondly, that, in any case, such decision is not a matter within the ambit of the competence under Article 146 of the Constitution.

Regarding the first objection, the relevant notice demanding payment by Applicant of the aforesaid amount of £44.200 mils, is dated the 25th September, 1964, (see *exhibit 4*) and as this recourse was filed on the 8th December, 1964, it is not, therefore, out of time, under Article 146(3) of the Constitution; thus, the first preliminary objection of counsel for Respondent 1 fails.

Regarding, however, the second preliminary objection of counsel for Respondent 1, I think that it should succeed, for the following reasons:—

Applicant has been supplied with water by virtue of an agreement dated 9th September, 1958, which is *exhibit 1* in these proceedings; this agreement was entered into between Applicant and the Water Board of Nicosia, Respondent 2, on behalf of the then Colonial Government, which has now been succeeded by the Government of the Republic; it is under this agreement that the demand, as per the notice, *exhibit 4*, for Applicant to pay £44.200 mils—and against which Applicant complains by means of this recourse—was made.

The said demand was actually made by Respondent 2, but it was made on behalf of the Government, which is in fact the supplier of water to Applicant, under the agreement, *exhibit 1*; Respondent 2 acted only as a collecting agent in this Case—(see the Opposition of Respondent 2).

Thus, we are faced here with the position that Applicant complains against action taken by virtue of an agreement with Government.

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It is well settled in Administrative Law that matters arising out of action taken by Government under contracts with citizens, are matters of private law, and as such they do not fall within a competence relating to the remedy by way of recourse for annulment, such as the competence under Article 146 of the Constitution, (see Conclusions from the Jurisprudence of the Greek Council of State 1929–1959, p. 233)

It follows that this Court has no competence, under Article 146, to entertain the complaint of Applicant—made, in particular, by means of claim (a) in the motion for relief—against the demand from him of the amount of £44.200 mils, as per *exhibit 4*; such claim (a) is, therefore, dismissed accordingly

Regarding the remainder of the motion for relief in this Case I would like to hear counsel further before deciding on the fate thereof.

All costs to-date, unless otherwise specifically decided earlier, to be costs in cause; but the costs of Respondent 1 for the hearing of this Case at which the preliminary objection resulting in the dismissal of Applicant's claim (a) was taken, and the costs of Respondent 1 for attending Court to-day to hear this Decision, are awarded to such Respondent, against Applicant, and are assessed at £10

*Order, and order as to costs,
as aforesaid.*