

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IORDANIS G. IORDANOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

IORDANIS G.
IORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(Case No. 151/66).

Public Officers—Transfers—Decision of Respondent to transfer Applicant—Validity—Decision a product of a defective exercise of Respondent's discretion—In that material factors have not been duly considered—And, also, in that the Respondent Commission failed to ascertain in full the relevant facts through a proper inquiry—Therefore, the aforesaid decision is annulled as having been taken in abuse and excess of powers and, also, contrary to law, namely, the relevant principles of Administrative Law—See, also, under the following headings.

Public Officers—Transfers—Trade Union status of Applicant—A most material consideration to be given due weight in dealing with questions of transfer of public officers—In the present case, Applicant was an active member of the Secretariat of the Cyprus Civil-Service Association, a Trade Union—As a matter of proper administration, relating to the proper functioning of the public service, officers who actively participate in the affairs of their trade union should not be transferred away from Nicosia, where it is the seat of the trade union—And thus be prevented from attending fully to their trade union duties—Unless there exist compelling reasons to the contrary—Such reasons to be fully recorded—The matter is, thus, not only a matter of fundamental rights under Article 21 of the Constitution—But, also, a matter directly related to the proper functioning of the public service as such—Especially in view of the fact that in this case there is a close collaboration between the Government side and the said Association on important matters affecting the whole structure of the public service. See, also, herebelow.

1967
April 22
—
JORDANIS G.
IORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Public Officers—Transfers—In cases where the conduct of the public officer concerned, namely, as in the present case, his alleged uncooperativeness towards his superiors and slackening of interest in his work is the basic reason for which his transfer was recommended and decided upon—Then, irrespective of whether or not such conduct ought to be treated as a disciplinary matter, the public officer concerned ought to have been afforded adequate opportunity to meet the allegations made against his conduct—In the present case, the Respondent Commission never afforded Applicant such opportunity, thus depriving itself of the possibility of making sufficient inquiry into the full relevant facts of the case—Such an inquiry, however, was a sine qua non for the validity of its decision—And in the absence of such inquiry the sub judice decision to transfer the Applicant must be annulled on this ground, too—See, also, herebelow.

Administrative Decisions—Validity—Decision being the product of defective exercise of the administrative discretion—In that material factors had not been duly considered or at all—Or, the administrative authority concerned had disabled itself from conducting a proper inquiry into the full relevant facts of the case—By failing to afford the public officer concerned adequate opportunity to meet adverse allegations regarding his conduct—In a case where such alleged conduct formed the basic reason on which his transfer was recommended and decided upon—Such decision is null and void as having been taken in abuse and excess of powers and, also, contrary to law, namely contrary to the relevant principles of Administrative Law—Cfr. hereabove under the headings Public Officers.

Discretion—Discretionary powers vested in the administration—Defective exercise thereof—See above.

Abuse and excess of powers—See above.

Excess of powers—See above.

Administrative Law—Principles of Administrative Law—Decision contrary to law, namely, contrary to the relevant principles of Administrative Law—See above.

Contrary to law—Decision contrary to law, namely contrary to the relevant principles of Administrative Law—See above.

Principles of Administrative Law—See above.

Trade Union—Status—Transfer—Transfer of a public officer actively

engaged in the management of the affairs of his trade union, in the present case of the Cyprus Civil Service Association—Factor to be considered—See above under Public Officers.

Administrative Law—See above under Public Officers; Administrative Decisions.

By this recourse the Applicant challenges the validity of the decision of the Respondent Public Service Commission dated the 13th May, 1966, to transfer him from Nicosia to Omodhos village as from the 1st July, 1966. The Applicant is an Assistant Agricultural Officer in the public service and previous to his said transfer he was posted in Nicosia at the Headquarters of the Department of Agriculture. It would seem that the *sub judice* decision to transfer the Applicant was taken on a recommendation made by his Department on the 10th March, 1966, on the following grounds:

“Exigencies of the Service; to take up Omodhos Beat which is now empty; Mr. Iordanou’s (the Applicant’s) work has deteriorated lately and his attitude towards his superiors leaves much to be desired. Therefore, his transfer to a beat will enable him to show whether he can improve and whether he will become useful to the Department”.

On receipt of this recommendation, the Commission felt apparently that this might be a case of misconduct of the Applicant and sought legal advice from the Attorney-General’s Office as to whether Applicant should be proceeded against by way of disciplinary proceedings. The advice given to the Commission, on the 30th March, 1966, was to the effect that there did not appear to exist any specific disciplinary offences and that this was, rather, a case of non-cooperation and tense relations between the Applicant and his superiors and, therefore, Applicant should be transferred, as proposed, in the interests of the proper functioning of the service. On the 5th April, 1966, the Commission decided to transfer the Applicant to Omodhos with effect from the 18th April, 1966. As a result of various steps and representations on the part of the Applicant, the Respondent Commission reconsidered his case on the 13th May, 1966; it heard, on that date, separately, both the Director of the Department of Agriculture and the Applicant himself. It then decided, on the same date, that its previous decision to transfer Applicant to Omodhos should stand but that it should take effect as from the 1st July, 1966.

1967
April 22

—
IORDANIS G.
IORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1967
April 22

—
IORDANIS G.
IORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

It is common ground that the Applicant was, at all material times, a member of the Secretariat of the Cyprus Civil Service Association, a Trade Union with its seat at Nicosia. It is also common ground that in his said capacity the Applicant was a member of a Sub-Committee (consisting of representatives of the Government and of the said Association), which was dealing with schemes of service for public officers. It seems that the status of the Applicant as an active member of the Secretariat of the said Trade Union was not taken into account by the Respondent Commission in arriving at its decision to transfer the Applicant as aforesaid.

On the other hand, it appears that the Respondent Commission never afforded to the Applicant an adequate opportunity to meet the allegations made against his conduct (*supra*), thus depriving itself of the possibility of conducting a sufficient inquiry into the full facts of the case.

The Court in granting the application and annulling the *sub judice* decision:

Held, I (1). In my opinion, the existence and the proper and unhindered functioning of a trade union of public officers—such as the aforementioned Cyprus Civil Service Association—is not only a matter of fundamental rights and liberties (see Article 21 of the Constitution), but it is also a matter directly related to the proper functioning of the public service, as such; *inter alia*, it is clear from the material before me, that there is a close collaboration between the Government side and the Association on important matters affecting the whole structure of the public service.

(2) I take the view that as a matter of proper administration, directly related to the proper functioning of the public service, those officers who actively participate in the affairs of their trade union should not be transferred away from Nicosia—where is the seat of the trade union—and be, thus, prevented from attending fully to their trade union duties, unless there exist compelling reasons to the contrary; it follows that the Public Service Commission, in each case, has to weigh the needs of a particular Department as against the wider interests of the public service in general (which are involved in the proper functioning of the public officers' trade union) and has to decide, in the light of all relevant circumstances, which should prevail, giving due reasons in support of its relevant decision.

1967
April 22

—
IORDANIS G.
IORDANO
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

(3) Yet, in the relevant minutes of the Commission—which must be presumed to set out in a summary form, the substantial considerations which the Commission weighed in reaching its decision to transfer Applicant to Omodhos—no reference is made *at all* to the trade union aspect of the matter; no indication whatsoever exists that the Commission paid any regard to such aspect in weighing the advisability of transferring the Applicant as proposed by his Department. Also, the views of the Cyprus Civil Service Association were not sought on the point; no attempt at all appears to have been made to ascertain to what extent the transfer of the Applicant would be expected to interfere with the proper discharge of his trade union duties.

(4) Thus, the Respondent Commission failed to take into due account the trade union aspect of the matter *i.e.* a material consideration and consequently it has failed to exercise its relevant discretion on a proper basis and in a proper manner, with the result that its *sub judice* decision, being the product of a defective exercise of its discretion, has to be annulled as being in abuse and excess of powers and, also, contrary to law, namely, the relevant principles of Administrative Law.

Held, II. There is a further ground on which I have to annul the sub judice decision:

(1) Whether or not the proper course to treat the transfer of the Applicant was to treat it as a disciplinary matter—and I need not determine the issue in the context of this judgment—the fact remains that the conduct of the Applicant, namely, his alleged uncooperativeness towards his superiors and slackening of interest in his work, was a basic reason for which his transfer was recommended and decided upon.

(2) Yet, on the material before me, it appears that the Commission never afforded to the Applicant the opportunity to meet the allegations made against his conduct, thus depriving itself of the possibility of conducting a sufficient inquiry into the full facts of the case. It is clear that the Applicant was not present to hear what his Head of Department stated to the Commission on that date (*viz.* the 13th May, 1966) about his conduct. It is equally clear from the evidence that the Applicant was never informed of the contents of the documents which were placed before the Commission and which were treated by it as proving lack of cooperation and non-smooth relations

1967
April 22

—
IORDANIS G.
IORDANOU
v.
RFPUBLIC
(PUBLIC SERVICE
COMMISSION)

between the Applicant and his colleagues. Therefore, the Applicant was never in a position to put his version of the facts before the Commission because he could not have known what matters have been raised in respect of his conduct.

(3) I have, thus, reached the conclusion that the Commission, in the manner in which it has proceeded in this matter, has disabled itself from ascertaining in full the relevant facts and it has not conducted the reasonably necessary inquiry into the said facts. Such an inquiry was a *sine qua non* for the validity of its decision—(see, *inter alia*, *HjiLouca and The Republic* (1966) 3 C.L.R. 854)—and in view of the absence thereof the *sub judice* decision has to be annulled on this ground, too.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

HjiLouca and The Republic (1966) 3 C.L.R. 854.

Recourse.

Recourse against the decision of the Respondent to transfer Applicant from Nicosia to Omodhos.

L. Clerides, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: By this recourse the Applicant challenges the validity of the decision of the Respondent Public Service Commission to transfer him to Omodhos as from the 1st July, 1966; such decision was taken on the 13th May, 1966 (see the minutes, *exhibit 2*).

The Applicant is an Assistant Argicultural Officer and previous to his transfer he was posted in Nicosia, at the Headquarters of the Department of Agriculture, in the Soils and Plant Nutrition Section.

A recommendation for the transfer of the Applicant to Omodhos was originally made, by his Department, on the 10th March, 1966 (see *exhibit 34*), on the following grounds:

“Exigencies of the Service; to take up Omodhos Beat which is now empty; Mr. Iordanou’s work has deteriorated lately and his attitude towards his superiors leaves much to be desired. Therefore, his transfer to a beat will enable him to show whether he can improve and whether he will become useful to the Department”.

1967
April 22
—
IORDANIS G.
IORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

On receipt of this recommendation, and of other relevant material which was placed before the Commission in relation thereto, the Commission, apparently, felt that this might be a case of misconduct of the Applicant and sought legal advice from the Attorney-General’s Office as to whether Applicant should be proceeded against by way of disciplinary proceedings. The advice given to it, on the 30th March, 1966, was to the effect that there did not appear to exist any specific offences and that this was, rather, a case of non-cooperation and tense relations between the Applicant and his superiors and, therefore, Applicant should be transferred, as proposed, in the interests of the proper functioning of the service (see *exhibit 24*).

Subsequently, on the 5th April, 1966, the Commission decided that Applicant be transferred to Omodhos with effect from the 18th April, 1966 (see *exhibit 35*).

Applicant filed a recourse against this decision, Case 82/66 (see *exhibit 16*); having been held by this Court, at an interlocutory stage,* that the *sub judice* decision of the Commission had not yet been properly communicated to the Applicant, the said recourse was eventually withdrawn and struck out on the 28th May, 1966, in view, also, of the fact that in the meantime the Commission had taken a new decision in the matter, in the following circumstances:

On the 18th April, 1966, the Applicant had made representations to the Commission, in writing, against his transfer (see bundle of documents, *exhibit 12*). As a result, the Commission reconsidered his case on the 13th May, 1966; it heard, on that date, separately, both the Director of the Department of Agriculture, Mr. R. Michaelides, and the Applicant, himself. It then decided, on the same date, that its previous decision to transfer Applicant to Omodhos should stand but that it

*Note: Vide (1966) 3 C.L.R. 308.

1967
April 22

—
IORDANIS G.
IORDANOU
v.
RFPUBLIC
(PUBLIC SERVICE
COMMISSION)

should take effect as from the 1st July, 1966. The relevant minutes (*exhibit 2*) read as follows:

*“Transfer of Mr. I. Iordanou, Assistant
Agricultural Officer.*

Mr. R. Michaelides present.

The Commission has considered the transfer of Mr. Iordanou. Mr. Michaelides, the Director of the Department of Agriculture was present and has given detailed information about his work and abilities. Mr. Iordanou who was before a schoolteacher went in 1957 on a scholarship to Australia where he obtained the diploma of B.Sc. Agriculture. On his return he was appointed to the post of Agricultural Assistant and on the 15th February, 1962, was promoted to Agricultural Superintendent, Grade I. He again was awarded a scholarship to England where he went on the 1.1.63 for soil and plant nutrition. He failed ultimately to finish his studies and was asked to return to Cyprus. When he came back on the 18th November, 1963, he was placed under Mr. Soteriades. So far his work and conduct were satisfactory but after the 6th May, 1965, when he failed to secure from the Public Service Commission a promotion to Agricultural Officer, Class II, his whole attitude to his work had changed. His interest in his work diminished, he became non-co-operative with his colleagues and very difficult to deal with.

It is now the practice of the Department in its effort to assist the villagers and ultimately to give effect to the development of agriculture in Cyprus to place officers with degrees out to rural beats. This was done also in the past although on a limited scale on account of shortage of suitable officers. Mr. Iordanou has a good agricultural education especially in soil and plant nutrition. In the opinion of the Commission his posting to Omodhos beat is to the benefit of agriculture in general. In that beat, he will be alone, he will work on his own and will undertake responsibility. Omodhos is a big agricultural beat with all sorts of fruit and other trees and vine-yards where he can put in practice his soil and plant nutrition knowledge. His transfer will be to the interest of the public service and to himself.

The Commission has further examined the contents of the documents filed and although they prove what Mr. Michaelides stated as to the lack of co-operation and not smooth relations between Mr. Iordanou and his colleagues yet they do not amount to specific disciplinary offences. (See legal advice by the Attorney-General, dated 30th May, 1966).

1967
April 22
—
IORDANIS G.
IORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

Mr. Michaelides withdrew.

Mr. Iordanou was then called before the Commission who, after being asked, stated that he had nothing to add to his representations which he had already submitted to the Commission in connection with his transfer.

The Commission, bearing all this in mind, came to the conclusion that the transfer of Mr. Iordanou to Omodhos should stand but his transfer will take effect as from the 1st July, 1966".

This decision of the Commission was communicated to the Applicant by letter dated the 23rd May, 1966 (see *exhibit 1*) and he filed the present recourse on the 17th June, 1966.

The Applicant applied twice for a Provisional Order, suspending the effect of his transfer pending the determination of this recourse; both his applications were refused. On the first occasion, however, the effect of the transfer was postponed until the 15th July, 1966, because of the fact that Applicant was a member of the Secretariat of the Cyprus Civil Service Association and he ought to be given sufficient time to make the necessary arrangements in respect of any Association work which he might have had in hand.

In view of the nature of this Case every possible priority was given to it, but its final determination has not become possible until now, because of the unavoidably protracted length of these proceedings.

Applicant has raised several issues in this Case in relation to the validity of his transfer.

I have not found it necessary, however, to decide specifically on all of such issues, in this Judgment.

One of the said issues has been that the recommendation for the transfer of Applicant to Omodhos, away from Nicosia,

1967
April 22
—
IORDANIS G.
IORDANOU
v.
RFPUBLIC
(PUBLIC SERVICE
COMMISSION)

was motivated by the fact that the Applicant had come into friction with his superiors in the Department, due to trade union matters connected with the affairs of the Cyprus Civil Service Association, which is a trade union.

As already stated, the Applicant was, at all material times, a member of the Secretariat of the Cyprus Civil Service Association; it is common ground that he was, in his said capacity, a member of a Sub-Committee — (consisting of representatives of the Government and of the Association) — which was dealing with schemes of service for public officers.

On the material before me, I have no doubt whatsoever that considerable friction, due to trade union affairs of the aforesaid Association, arose between the Applicant and his immediate superior, his Head of Section, Mr. Soteriades; it even led to a libel action by Mr. Soteriades against Applicant and others (see *exhibit 23*).

But I have not deemed it necessary to go into the question of whether or not it is, in fact, such friction which led to the recommendation to transfer Applicant, away from Nicosia, to Omodhos, because, for the reasons given hereinbelow, I have reached the conclusion that, unfortunately, the Commission has failed to pay due regard to the very material factor of *the trade union status, itself*, of the Applicant, when deciding whether or not to transfer him, with the result that Applicant's transfer has to be annulled in any case; so no useful purpose would be served by going further and examining whether or not friction connected with Applicant's said status has led to the recommendation for his transfer.

In my opinion, the existence and the proper and unhindered functioning of a trade union of public officers — such as the aforementioned Association — is not only a matter of fundamental rights and liberties (see Article 21 of the Constitution), but it is also a matter directly related to the proper functioning of the public service, as such; *inter alia*, it is clear, from the material before the Court in this Case, that there is close collaboration between the Government side and the Association on important matters affecting the whole structure of the public service.

I take the view that as a matter of proper administration, directly related to the proper functioning of the public service, those public officers who actively participate in the affairs

of their trade union should not be transferred away from Nicosia — where is the seat of the trade union — and be, thus, prevented from attending fully to their trade union duties, unless there exist compelling reasons to the contrary; it follows that the Public Service Commission, in each such case, has to weigh the needs of a particular Department as against the wider interests of the public service in general (which are involved in the proper functioning of the public officers' trade union) and has to decide, in the light of all relevant circumstances, which should prevail, giving due reasons in support of its relevant decision.

In this respect it is important to note that the Council of Ministers, by a decision, No. 5810, dated the 14th July, 1966, (which has been produced as *exhibit* 1 on the 19th July, 1966, during the hearing of an application in this Case for a Provisional Order) has expressly laid down that, in future, members of the Secretariat of the Cyprus Civil Service Association should not be transferred from Nicosia, during their term of office, except with the approval of the Council of Ministers; of course, such approval cannot be taken to refer to approval by the Council of a relevant decision of the Public Service Commission — because such a step would be beyond the competence of the Council and an unwarranted interference with the competence of an independent organ, such as the Commission; so it must be taken to refer to approval by the Council of a proposal by a particular Department for the transfer away from Nicosia of an officer who happens to be a member of the Secretariat of the Association.

The said decision of the Council was taken after the sub judice decision of the Commission and, therefore, after, also, the recommendation of the Department of Agriculture for the transfer of Applicant to Omodhos; and it has no retrospective effect. So it cannot be regarded as being directly relevant to the validity of the transfer of the Applicant to Omodhos; it cannot be said that such transfer resulted from a recommendation which was made without the necessary approval of the Council of Ministers.

But the decision in question of the Council of Ministers is, nevertheless, a useful element in this Case because it *confirms* on the level of the highest Executive Organ of the State, the view that the trade union status of a member of the Secretariat of the Cyprus Civil Service Association, such

1967
April 22

—
IORDANIS G.
IORDANOY
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

as the Applicant, is a most material consideration in relation to the question of his transfer away from Nicosia.

Mr. D. Proestos, a member of the Public Service Commission, who has given evidence in this Case, has told the Court that the Commission had in mind, because of the documents before it, the question of the trade union activities of the Applicant; and this is quite correct, because in, *inter alia*, the representations made by the Applicant to the Commission on the 18th April, 1966, (see *exhibit 12*) and in a letter of the 10th March, 1966, addressed by the Director of the Department of Agriculture to the Public Service Commission, in relation to the transfer of the Applicant (see again *exhibit 12*), the trade union status of the Applicant is expressly referred to.

Yet, in the above-quoted minutes of the Commission (*exhibit 2*) — which must be presumed to set out, in a summary form, the substantial considerations which the Commission weighed in reaching its decision to transfer the Applicant to Omodhos — no reference is made *at all* to the trade union aspect of the matter; no indication whatsoever exists that the Commission paid any regard to such aspect in weighing the advisability of transferring the Applicant as proposed by his Department. Also, as Mr. Proestos has stated in evidence, the views of the Cyprus Civil Service Association were not sought on the point; no attempt at all appears to have been made to ascertain to what extent the transfer of the Applicant would be expected to interfere with the proper discharge of his trade union duties.

One is, therefore, irresistibly driven to the conclusion that the Commission, in deciding, on the 13th May, 1966, on the transfer of Applicant to Omodhos, did not pay due regard to the trade union aspect of the matter. Thus, it failed to take into due account a material consideration and consequently it has failed to exercise its relevant discretion on a proper basis and in a proper manner, with the result that its *sub judice* decision, being the product of a defective exercise of its discretion, has to be annulled as being in abuse and excess of powers and, also, contrary to law, namely, the relevant principles of Administrative Law.

There is a further ground on which I have to annul the *sub judice* decision:

It has been submitted by counsel for Applicant that the Commission ought to have treated the case of the transfer of the Applicant as a disciplinary matter and ought to have afforded him, consequently, full opportunity to exculpate himself.

Whether or not it was the proper course to treat the matter as a disciplinary one – and I need not determine this issue in the context of this Judgment – the fact remains that the conduct of the Applicant, namely, his alleged uncooperativeness towards his superiors and slackening of interest in his work, was a basic reason for which his transfer was recommended and decided upon; this is abundantly clear from the evidence of his Head of Department, Mr. Michaelides, and of Mr. Protestos, a member of the Respondent Commission.

Yet, on the material before the Court, it appears that the Commission never afforded to the Applicant an adequate opportunity to meet the allegations made against his conduct, thus depriving itself of the possibility of conducting a sufficient inquiry into the full facts of the case. It is clear from the Commission's minutes for the 13th May, 1966 (*exhibit 2*) that the Applicant was not present to hear what his Head of Department stated to the Commission, on that date, about his conduct. It is equally clear from the evidence of Mr. Protestos that the Applicant was never informed of the contents of the documents which were placed before the Commission – *exhibit 12* – and which were treated by it as proving lack of cooperation and non-smooth relations between the Applicant and his colleagues. Therefore, when the Applicant was asked by the Commission whether he wished to add anything to his already-made representations – he was not in a position to put his version of the facts before the Commission because he could not have known what matters had been raised, in respect of his conduct.

I have, thus, reached the conclusion that the Commission, in the manner in which it has proceeded in this matter, has disabled itself from ascertaining in full the relevant facts and it has not conducted the reasonably necessary inquiry into the said facts. Such an inquiry was a *sine qua non* for the validity of its decision – (see, *inter alia*, *HjiLouca and The Republic*, (1966) 3 C.L.R. 854) – and in view of the absence thereof the *sub judice* decision has to be annulled on this ground, too.

1967
April 22

—
IORDANIS G.
IORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

1967
April 22

—
JORDANIS G.
JORDANOU
v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

For all the foregoing reasons the transfer of the Applicant is hereby declared to be null and void and of no effect whatsoever.

The matter will now have to be reconsidered by the Commission. In doing so, it would be particularly useful for the Commission to bear in mind that in the proceedings in this Case the Applicant has alleged that the Commission has been *bona fide* misled by the Director of the Department of Agriculture regarding the exact course of the studies of the Applicant in the United Kingdom, regarding the exact nature of the Applicant's work and the work that it was to be expected that he would do at Omodhos, and as to whether officers, such as the Applicant, have ever been posted in a rural beat of the nature of the beat of Omodhos; no doubt the Commission will ensure that it has before it the correct facts.

As regards costs, I have decided, in the light of all the material before me, to make no order as to costs.

*Decision complained of
declared null and void.
No order as to costs.*