1969
April 28
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MODESTOS SAVVA PITSILLOS
v.
ELIAS ARISTODEMOU

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS SAVVA PITSILLOS,

Applicant,

and

ELIAS ARISTODEMOU,

Respondent.

(*Case No.* 11/69).

Constitutional and Administrative Law—Recourse under Article 146 *of the Constitution—Judicial decision—Cannot be made the subject of the said recourse—See also herebelow.*

Jurisdiction—Jurisdiction of the Supreme Court under Article 146.1 *of the Constitution—Confined only and exclusively to matters concerning a decision, act or omission of any organ authority or person exercising executive or administrative authority—See, also, herebelow.*

Jurisdiction—Jurisdiction of the Courts of the Republic—Articles 146, 152 *and* 155 *of the Constitution; and the Administration of Justice (Miscellaneous Provisions) Law,* 1964 (*Law No.* 33 *of* 1964) *section* 11(2).

Recourse under Article 146 *of the Constitution—See above.*

Recourse—Frivolous—Obviously frivolous—Article 134.2 *of the Constitution.*

Observations *by the Court regarding the need for a legal aid scheme.*

The facts sufficiently appear in the judgment of the Court dismissing this recourse against a decision of the Supreme Court in its appellate jurisdiction.

Recourse.

Recourse for a declaration that the decision of the Supreme Court in a civil appeal, against a judgment of the District Court

of Nicosia dismissing an action for damages for personal injuries, should be reviewed.

Applicant in person.

Ch. Velaris, for the Respondent.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: The decision of this recourse appears to me to involve a question with regard to the true construction of para. 1 of Article 146 of our Constitution.

The facts are very simple. The Applicant has brought an action, No. 1249/67, in the District Court of Nicosia, claiming personal damages against the defendant, Elias Aristodemou, for assaulting him on April 2, 1965. The trial Court, after hearing the parties, delivered its judgment dismissing the action. The Applicant appealed to the Supreme Court under Order 35 of the Civil Procedure Rules, but the Court of Appeal, after hearing the appellant and counsel for the Respondent, dismissed the appeal with £12.—costs against the Appellant.

On January 13, 1969, the Applicant filed the present application, praying for a declaration by this Court that the decision of the Supreme Court in Civil Appeal No. 4688* should be reviewed. On January 29, 1969, the opposition was filed and it was based, *inter alia*, on the following grounds of law: (a) that the said decision of the Supreme Court in Civil Appeal 4688 is not an act or omission of any organ, authority or person exercising any executive or administrative authority in accordance with the provisions of Article 146 of the Constitution; (b) that the Supreme Court, in its appellate jurisdiction, has decided the said civil appeal No. 4688, under the provisions of Article 155 of the Constitution and of the Civil Procedure Rules Cap. 12 Order 35 and, therefore, its decision cannot be reviewed.

The Applicant today, in his long address to the Court, has contended that this Court, in its revisional jurisdiction, ought to review the decision of the Court of Appeal and declare it as being *null* and *void* and of no effect whatsoever; and because the Court of Appeal did not afford him all the time in the world to address them, thus contravening Article 28 of the Constitution. Furthermore, he argued that the trial Court has failed to record matters of substance during the

*Published in (1968) 12 J.S.C. 1409.

trial of action No. 1249/67, and that the Court of Appeal has failed to make a specific finding on this issue.

I would like, at this stage, before dealing with paragraph 1 of Article 146, to make it quite clear that this case would have never come before this Court, if the Applicant had either assistance of a lawyer of his own choice, or in some way he could have received free legal advice under a legal aid scheme which, unfortunately, is not yet in existence in Cyprus. Indeed, the need of such a legal aid scheme is most felt in this case, because it would have saved the valuable time of this Court, and it would also have saved everybody the trouble and expense of this frivolous litigation. In the light of this statement, I would further add that this is the first time in the history of the Courts of this country, or indeed of any other country, that one member of the Supreme Court, sitting as an administrative Court, is asked to review in a recourse the decision of the Supreme Court in its appellate jurisdiction.

As this application appeared on its face so obvious that this Court had no jurisdiction to adjudicate on a recourse made to it in respect of a judicial decision of the Court of Appeal, I was wondering, before the hearing of this recourse, whether the Court would invoke the provisions of paragraph 2 of Article 134, and dismiss the recourse which, I repeat, appears to be *prima facie* frivolous. In the absence of any authority on this point, and having heard no argument to that effect in advance, I have decided—fully aware that the time of the Court would have been wasted—to afford the Applicant a public hearing.

I would, however, in fairness to the Applicant who is not a legally trained man, state that even at a late stage when he was arguing his case, he realized that he could not invoke the provisions of the said Article 146, and went on to make a declaration that he was not proceeding with this recourse under the aforesaid Article.

I consider it pertinent to quote from the short judgment of the Court of Appeal:-

> « Τὸ πρωτόδικον Δικαστήριον ἀπέρριψε τὴν ἐν λόγῳ ἀπαίτησιν ἀποφανθὲν ὅτι ὁ ἐφεσείων δὲν ἐδικαιοῦτο νὰ ἐγείρῃ ταύτην δεδομένου ὅτι τὴν 3ην Μαρτίου, 1966, ὅτε συνεβιβάσθη ἐνώπιον Ἐπαρχιακοῦ Δικαστηρίου ἐν Λευκωσίᾳ ἡ ἀγωγὴ 1187/65, καταχωρισθεῖσα ὑπὸ τοῦ ἐφεσείοντος κατὰ

τοῦ ἐφεσιβλήτου καὶ ἄλλων προσώπων, ὁ ἐφεσείων ἐδήλωσε ρητῶς (ὡς ἀνεγράφη καὶ εἰς τὰ πρακτικά, ἵδε τεκμήριον 1) ὅτι 'ὅλαι αἱ ἄλλαι διαφοραὶ του μετὰ τῶν ἐναγομένων συμβιβάζονται.'

Ὁ ἐνάγων σήμερον δὲν ἠρνήθη ὅτι προέβη εἰς τὴν δήλωσιν ταύτην, ἀλλ' ἰσχυρίσθη ὅτι ἡ τοιαύτη δήλωσις δὲν ἀνεφέρετο καὶ εἰς τὴν ἐκκρεμοῦσαν τότε ἀπαίτησίν του κατὰ τοῦ ἐφεσιβλήτου δι' ἐπίθεσιν, ἐν σχέσει πρὸς τὴν ὁποίαν δὲν εἶχε μέχρι τότε καταχωρήσει ἀγωγὴν κατ' αὐτοῦ.

Κατὰ τὴν ἡμετέραν γνώμην τὸ πρωτόδικον Δικαστήριον ὀρθῶς ἠρμήνευσε τὸν συμβιβασμὸν τῆς 3ης Μαρτίου, 1966, εἰς τὴν ἀγωγὴν 1187/65, καὶ κατέληξεν οὕτω εἰς τὸ συμπέρασμα ὅτι ὁ ἐφεσείων ἐγκατέλειψε τότε οἱανδήποτε ἀπαίτησίν του τὴν ὁποίαν τυχὸν εἶχε κατὰ τοῦ ἐφεσιβλήτου διὰ τὴν ἐπίθεσιν τῆς 2ας Ἀπριλίου, 1965, καὶ ὅτι, συνεπῶς, δὲν ἐδικαιοῦτο νὰ καταχωρήσῃ μετέπειτα ἀγωγὴν ἀπαιτῶν ἀποζημιώσεις διὰ τὴν περὶ ἧς ὁ λόγος ἐπίθεσιν.»

It is not in dispute that upon the coming into force of this Constitution, the Supreme Constitutional Court had exclusive jurisdiction to adjudicate finally on a recourse involving alleged unconstitutionality, illegality, or excess or abuse of power involved in matters concerning a decision, act or omission of any organ, authority or person exercising executive or administrative authority. There can be no doubt that Article 146 was specifically intended to create a separate system of administrative justice which has been entrusted to that Court, and that the Court can only adjudicate in cases relating to matters where consequent upon its decision, the Court may order the Respondent to take some executive or administrative action. That this is not so in this case is obvious.

With regard to the judicial power of the High Court and the subordinate Courts, Article 152 reads as follows:–

"1. The judicial power, other than that exercised under Part IX by the Supreme Constitutional Court and under paragraph 2 of this Article by the Courts provided by a communal law, shall be exercised by a High Court of Justice and such inferior Courts as may, subject to the provisions of this Constitution, be provided by a law made thereunder."

It would be observed, therefore, that Articles 146 and 152 are substantive enactments dealing directly with the jurisdiction of the Courts of the Republic.

Article 155 is in these terms:-

> "1. The High Court shall be the highest appellate Court in the Republic and shall have jurisdiction to hear and determine, subject to the provisions of this Constitution and of any Rules of Court made thereunder, all appeals from any Court other than the Supreme Constitutional Court."

With the enactment of the Administration of Justice, (Miscellaneous Provisions Law 1964) the jurisdiction and powers exercised by the Supreme Constitutional Court and by the High Court, is now exercised—since 9th July, 1964—by the Supreme Court.

Section 11(2) of Law 33/64 reads:-

> " Any original jurisdiction vested in the Court under any law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority, as being contrary to law in force or in excess or abuse of power, may be exercised, subject to any Rules of Court, by such Judge or Judges as the Court shall determine; provided that, subject to any Rules of Court there shall be an appeal to the Court from his or their decision."

It would be observed, that on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority, the recourses are tried by a single member of this Court with a right of an appeal to the full Court.

With regard to the true construction of paragraph 1 of Article 146, it becomes very clear, in my view, from what I have already said, that the jurisdiction of this Court is confined only and exclusively to matters concerning a decision, act or omission of any organ, authority or person exercising executive or administrative authority; and has no jurisdiction or competence to deal with the decision of the Appeal Court, complained of in this recourse, because it is a judicial decision

and, therefore, cannot be made the subject of a recourse to this Court under the said Article 146 of the Constitution.

For the reasons I have advanced, I have reached the conclusion that this recourse should be dismissed with costs in favour of the Respondent, to be assessed by the Registrar of this Court.

Recourse dismissed with costs.