

1970
Mar. 4

[TRIANTAFYLLIDES, J.]

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NICOS
LAMBRAKIS
v.
REPUBLIC
(EDUCATIONAL
SERVICE
COMMITTEE)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS LAMBRAKIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 32/69).

Recourse under Article 146 of the Constitution—Recourse for annulment of administrative acts or decisions—What is primarily before the Court is the decision subject-matter of the recourse—The parties to the recourse are of secondary importance—In the sense that they are only heard in support or against the validity of its subject-matter—See further infra.

Recourse under Article 146 of the Constitution—In examining such validity (supra) this Court can go into certain matters ex officio, and it can take cognizance of other matters only after they have been raised and established to its satisfaction by anyone of the parties.

Recourse under Article 146 of the Constitution—Evidence—Further evidence—Application to adduce further evidence after judgment was reserved—Refused, subject to the Court's right to call for further evidence later, if found necessary, while considering judgment.

Practice—Further evidence—See supra.

The facts sufficiently appear in the decision of the Court.

Application.

Application for the re-opening of the hearing of a recourse after judgment was reserved on the 8th January, 1970, in order to put before the Court certain further evidence.

L. Clerides, for the Applicant.
G. Tornaritis, for the Respondent.
A. Christofides, for the Interested Party.

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Cur. adv. vult.

The following decision was delivered by:—

TRIANTAFYLLIDES, J.: In this case counsel for the Applicant—who appeared for the first time in these proceedings, as other counsel had been appearing for the Applicant previously—has applied, on the 22nd January, 1970, for the re-opening of the hearing of the case, after judgment was reserved on the 8th January, 1970; he has done so in order to have the opportunity to put before the Court certain further evidence.

Such evidence consists, first, of the texts of two Greek legislative enactments, Decree 3379/55 and Law 4372/20.

Actually, counsel for the Respondent and for the Interested Party have, all along, during the hearing, been trying to put in, as part of the record, the texts of these two enactments and counsel then appearing for the Applicant strongly objected always to such a course; and, eventually, he succeeded in excluding such texts from the record of proceedings.

Furthermore, it is sought, now, by counsel for the Applicant to place before the Court an apparently official statement from the Salonica University to the effect that during the academic years from 1951 to 1957 the subject of pedagogics was not being taught to students of mathematics there.

Counsel appearing for the Applicant all through the hearing had ample opportunity to adduce evidence of this nature, but he has failed to do so. He only applied to be allowed to adduce it after the final addresses of counsel, on the 8th January, 1970, and I then ruled that this was too late a stage at which to grant leave for such a course.

Let it be made clear, however, that what is primarily before this Court, for examination as to its validity, is the decision which is the subject-matter of the recourse. The parties to the recourse are of a secondary importance, in the sense that they were only heard in support or against the validity of its subject-matter.

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In examining such validity this Court, acting under Article 146 of the Constitution, can go into certain matters, *ex officio*, and it can take cognizance of other matters only after they have been raised and established to its satisfaction by anyone of the parties.

As I have not yet embarked upon the consideration of my judgment in this case, this is too early a stage for me to decide whether or not any documentary or other evidence, which, for one reason or another, is not before the Court at present, is related to the validity of the *sub judice* decision in such a manner that this Court has to seek itself to have it placed before it.

I, therefore, shall not allow at present the re-opening of the hearing. The judgment remains reserved. But if, while, considering my judgment, I reach the conclusion that there is any relevant documentary or other evidence which is not before the Court, and the production of which should be ordered by the Court, for the proper exercise of my jurisdiction under Article 146, I shall not hesitate to do so.

As regards costs for today, they shall be costs in the cause, but in any case not against the Respondent or the Interested Party.

Application refused. Order for costs as above.