

[MALACHTOS, J.]

1972
May 22

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

COSTAS M
HOPPI

COSTAS M. HOPPI,

v.

Applicant,

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND ANOTHER,

Respondents.

(Case No. 353/71).

Private Schools Law, 1971 (Law No. 5 of 1971)—Section 18(4) providing that “no teacher can be the headmaster or teacher in a private school after the end of the school-year in which he attained the age of sixty-eight years”—Not repugnant to Articles 20, 25, 26 and 28 of the Constitution—Cf. infra. under : Constitutional Law

Constitutionality of laws—Judicial control of the Constitutionality of legislation—General principles applicable restated—The Court will not interfere unless convinced beyond reasonable doubt that a given legislative provision is unconstitutional—And the Court should as far as possible so interpret a statute as to bring it in line with the Constitution.

Constitutional Law—Article 20 of the Constitution—Scope, meaning and effect—Right to receive or give instruction or education.

Constitutional Law—Article 25 of the Constitution—Right to practise any profession or to carry on any occupation, trade or business—Scope, meaning and effect.

Constitutional Law—Article 26 of the Constitution—Right to enter freely to any contract—Scope, meaning and effect.

1972
May 22

COSTAS M.
HOPPI

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

*Constitutional Law—Article 28 of the Constitution—
Establishing the principle of equality before the Law,
the administration etc.—Reasonable distinctions allowed.*

The applicant in this case is a secondary school teacher of mathematics, who at the material time was engaged on contract in various secondary education institutions in Nicosia. In August 1971 he applied to the Minister of Education for extension of his teaching licence. By letter dated September 2, 1971, signed by the Inspector—General of secondary education, his application was refused on the ground that "in accordance with the existing legislation" no such licence could be "awarded to you because you have already attained the age of 68 years". Section 18(4) of the Private Schools Law, 1971 (Law No. 5 of 1971) provides:

"No teacher can be the headmaster or teacher in a private school after the end of the school year in which he attained the age of sixty-eight years".

It is against this refusal that the applicant filed his present recourse his main argument being that the provisions of the said section 18(4) (*supra*) are unconstitutional, namely they offend against Articles 20, 25, 26 and 28 of the Constitution. The Court, rejecting this plea of unconstitutionality, held that the sub judice decision was properly taken in accordance with the aforesaid provisions in section 18(4) (*supra*) and dismissed the recourse without making any order as to costs.

Held, (1) In considering the constitutionality of a law this Court has to be guided by certain well established principles which have been laid down in the case of the *Board of Registration of Architects etc. v. Kyriakides* (1966) 3 C.L.R. 640, at p. 654, to the effect that "a rule of precautionary nature is that no act of legislation will be declared void except in a very clear case or unless the act is unconstitutional beyond all reasonable doubt". See also *ib.* at p. 655: It is a cardinal principle that if at all possible the Court will construe the statute so as to bring it within the law of the Constitution".

(2) In considering the constitutionality of the said section 18(4) of Law No. 5 of 1971 (*supra*) and

having in mind the above principles, I do not find anything in this section offending any of the Articles 20, 25, 26 and 28 of the Constitution.

1972
May 22
—

COSTAS M
HOPPI

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

Note : The full text (as far as material to this case) of those Articles is set out *post* in the judgment of the learned Judge who, dealing specifically with each one of them, gives his reasons why the said section 18(4) cannot be said to be repugnant to, or inconsistent with, any of those Article of the Constitution.

Recourse dismissed.

No order as to costs.

Cases referred to :

The Board of Registration of Architects etc. v. Kyriakides (1966) 3 C.L.R. 640, at pp. 654 and 655;

District Officer, Nicosia and Ioannides, 3 R.S.C.C. 107, at p. 109;

Chimonides v. Evanthia Manglis (1967) 1 C.L.R. 125;

Nebbia v. New York, 291 U.S. 502 (1933); 78 Law Ed. 940, at p. 957.

Recourse.

Recouse against the refusal of the respondents to grant a teaching licence to the applicant.

L. Papaphilippou, for the applicant.

G. Tornaritis, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :

MALACHTOS, J. : The applicant in this case is a secondary school teacher of mathematics and was

1972
May 22

COSTAS M.
HOPPI

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

qualified as such in the year 1928. He was first appointed as a secondary school teacher in Egypt where he worked for a number of years at the Port Said Lyceums, In 1950 he was appointed in the Neokleous Lyceum in Nicosia where he worked up to 1963. As from 1963 till the school year 1970/71 the applicant was engaged on contract in various secondary education institutions in Nicosia. In August 1971 he applied to the Minister of Education for extension of his teaching licence. By letter dated 2nd September, 1971, *exhibit 1*, signed by the Inspector-General of secondary education the applicant was given the following reply :

“In answer to your letter to the Minister of Education I regret to inform you that unfortunately no teaching licence can be awarded to you in accordance with the existing legislation, because you have already attained the age of 68 years.”

It is not disputed that on the day the applicant applied to the Minister of Education for a teaching licence he had already completed his 68th birthday being born on the 31st November, 1902. The existing legislation to which the letter of 2/9/71, *exhibit 1*, refers to is Law 5/71, the Private Schools Law, 1971 and in particular, section 18(4) which reads as follows :

“No teacher can be the headmaster or teacher in a private school after the end of the school year in which he attained the age of sixty-eight years.”

On the 18th day of September, 1971, the applicant filed the present recourse by which he claims—

“A declaration of the Court that the act and/or decision of the respondents by which they refuse to grant extension of his teaching licence and/or teaching licence to the applicant is illegal and of no legal effect whatsoever.”

It has been argued on behalf of the applicant that Law 5/71, the Private Schools Law 1971, and in particular section 18 subsection (4), is unconstitutional as

offending Articles 20, 25, 26 and 28 of the Constitution.
Article 20 of the Constitution reads as follows :

1972
May 22
—

COSTAS M.
HOPPI

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

"1. Every person has the right to receive, and every person or institution has the right to give, instruction or education subject to such formalities, conditions or restrictions as are in accordance with the relevant communal law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or the standard and quality of education or for protection of the rights and liberties of others including the right of the parents to secure for their children such education as is in conformity with their religious convictions.

2.

3.

4.

"

Article 25 reads as follows :

"1. Every person has the right to practice any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest :

Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality,

1972
May 22

condition or restriction is contrary to the interests of either Community.

COSTAS M
HOPPI

3.

”

v

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

The argument of counsel for the applicant, as far as these two Articles of the Constitution are concerned, is that section 18(4) of the Law imposes conditions and restrictions which are not contained therein.

Article 26 reads as follows .

“1. Every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract. A law shall provide for the prevention of exploitation by persons who are commanding economic power.

2.

”

As far as this Article is concerned it has been argued on behalf of the applicant that section 18(4) of the Law imposes conditions, limitations or restrictions which are not laid down in the General Principles of the Law of Contract regarding the age of the applicant so that his right to enter freely into a contract of employment cannot be exercised.

Article 28 reads as follows .

“1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2.

3.

4.

”

As to this Article it has been argued on behalf of the applicant that he was not given equal treatment to secondary school teachers of the public schools, since

under section 10(1)(c) of Law 56/67, which corresponds to section 18(4) of Law 5/71 "The Council of Ministers has power if it deems desirable in the interest of education, to allow to a secondary school teacher to remain in the service after the date on which the age of his compulsory retirement has been completed, for such time as the Council would specify", whereas as regards private schools there is no such power.

1972
May 22

COSTAS M.
HOPPI

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

Under section 10(1) of Law 56/67, the age of compulsory retirement of all the secondary school teachers is that of 60 years.

In considering the constitutionality of a law this Court has to be guided by certain well established principles which have been laid down in the case of the *Board of Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640. At page 654 of this report it is stated that "a rule of precautionary nature is that no act of legislation will be declared void except in a very clear case or unless the act is unconstitutional beyond all reasonable doubt."

Further down on the same page the following passage is quoted from the judgment of Mr. Justice Roberts in *Nebbia v. New York*, 291 U.S. 502 (1933); 78 Law. Ed. 940, at page 957: "With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the Courts are both incompetent and unauthorised to deal. The course of decision in this Court exhibits a firm adherence to these principles. Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favour of its validity, and that though the Court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power."

And at page 655 in *Kyriakides'* case. *supra*, it is also stated that "it is a cardinal principle that if at all possible the Court will construe the statute so as to bring it within the law of the Constitution."

In considering the constitutionality of section 18(4)

1972
May 22

COSTAS M.
HOPPI

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)

of the Private Schools Law 1971 (Law 5/71), having in mind the above principles, I do not find anything in this section offending Article 20 of the Constitution. It is true that the formalities, conditions or restrictions to be imposed by the relevant law to be enacted, cannot possibly refer to the age of the person receiving or giving instructions or education but in my view these restrictions are exhaustive only as to the kind of instruction or education a person can receive or give.

Nor do I find anything in section 18(4) of Law 5/71 contrary to Article 25 of the Constitution. It was held in *The District Officer, Nicosia and Georghios Ioannides*, 3 R.S.C.C. 107 at page 109 that —

“Article 25 safeguards the rights to practice any profession or to carry on any occupation, trade or business subject to such formalities, conditions or restrictions as provided for therein. What is guarded against are infringements in the exercise of this right as such; but controls in respect of objects, which might be necessary for the exercise of such right are not excluded by this Article.”

In the present case although it is clear that the relevant legislative enactment directly interfered with the right of the applicant to exercise his profession yet, in my opinion, this restriction is necessary in the public interest as provided by paragraph 2 of Article 25 of the Constitution.

As regards the contention of counsel for applicant that section 18(4) of Law 5/71 is repugnant to or inconsistent with the provisions of Article 26 of the Constitution, all I need say is that on the basis of any one of the views regarding the application of this Article, which were expressed in *Constantinos Chimonides v. Evanthia K. Manglis* (1967) 1 C.L.R. 125, cannot be held to be unconstitutional.

Lastly, I cannot accept the contention of counsel for the applicant that section 18(4) of Law 5/71 offends against the principle of equality, which is safeguarded by

Article 28 of the Constitution. The difference in nature between public and private schools is such that it was quite reasonably open to the legislature to make this reasonable distinction.

For all the above reasons, this recourse fails.

Taking into consideration all the circumstances of this case I make no order as to costs.

*Application dismissed;
no order as to costs.*

1972
May 22

—
COSTAS M.
HOPPI

v.

REPUBLIC
(MINISTRY OF
EDUCATION
AND ANOTHER)