

1976
Mar. 6

[A. LOIZOU, J.]

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NICOS
STAVROU
v.
REPUBLIC
(MINISTER OF
LABOUR
AND SOCIAL
INSURANCE
AND OTHERS)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS STAVROU,

Applicant,

and

- A. THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF LABOUR AND SOCIAL
INSURANCE,
2. THE DIRECTOR OF SOCIAL INSURANCE,
B. REDUNDANCY FUND,

Respondents.

(Case No. 371/74).

*Termination of Employment (Redundancy Fund) Regulations, 1968—
Regulation 13(2)—Could not be validly enacted under s. 25(1)
and 2(c) of the Termination of Employment Law, 1967 (Law 24
of 1967).*

Subsidiary Legislation—Validity of—Principles applicable.

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*Statutes—Construction—Section 25(1) and (2)(c) of the Termination
of Employment Law, 1967 (Law 24 of 1967)—Any doubt on the
matter to be resolved in favour of the right of the citizen.*

*Termination of Employment Law, 1967 (Law 24 of 1967)—Constru-
ction of s. 25(1) and (2)(c) of the Law.*

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*Redundancy—Payment on account of redundancy—Extinguishment of
right to payment.*

*Words and Phrases—"Regulation", "prescribe" and "manner" in
section 25(1), 25(2) and 25(2)(c), respectively of the Termination
of Employment Law, 1967 (Law 24 of 1967).*

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The applicant was paid a sum of money out of the Redundancy Fund by means of checks drawn on the Central Bank of Cyprus, each one bearing a notice that it should be presented for payment within six months from its date. When he failed to present them for payment within the aforesaid six months' period the respondents refused his request to have them replaced. Hence the present recourse:

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Respondents' refusal was based on regulation 13(2)* of the Termination of Employment (Redundancy Fund) Regulations, 1968 made under section 25** of the Termination of Employment Law, 1967 (Law No. 24 of 1967) and specifically under sub-section (1) and sub-section (2) paragraph (c) thereof.

The only issue for consideration in the recourse was whether regulation 13(2) was *ultra vires* the enabling enactment.

Held, (after reviewing the legal principles governing the validity of subsidiary legislation and after dealing with the meaning of the material words of s. 25(1) and (2)(c) of the law—vide pp. 70-72 post).

(1) That on the true construction of section 25 and in particular sub-sections (1) and 2(c) of the law and having regard to the meaning of the material words in the said statutory provision, regulation 13(2) could not be validly enacted under this section; that the Law was enacted for the sole purpose of benefiting the employees and relieve them from the consequences of dismissal on the ground of redundancy and nothing but clear and unambiguous words in the enabling section could deprive them of the rights conferred by Law; that any doubt on the matter about the extent and effect of the said enactment has to be resolved in favour of the right of the citizen (see *Fina (Cyprus) Ltd. and The Republic*, 4 R.S.C.C. 26 at p. 33); and that, accordingly, as regulation 13(2) is *ultra vires* the enabling enactment and invalid, the present recourse will succeed.

Sub judice decision annulled.

Cases referred to:

Marangos and Another v. Municipal Committee of Famagusta (1970) 3 C.L.R. 7;

Spyrou and Others (No. 2) v. Republic (1973) 3 C.L.R. 627;
Municipal Corporation of the City of Toronto v. Virgo [1896] A.C. 88;

Attorney-General for Ontario v. Attorney-General for the Dominion, and the Distillers and Brewers' Association of Ontario [1896] A.C. 348;

Birmingham and Midland Motor Omnibus Co. Ltd. v. Worcester-shire County Council [1967] 1 All E.R. 544;

Tarr v. Tarr [1972] 2 All E.R. 295 at p. 302;

* Quoted at p. 69 *post*.

** Quoted in full at pp. 69-70 *post*.

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FINA (Cyprus) Ltd., and The Republic, 4 R.S.C.C. 26 at p. 33;
Chester v. Bateson [1920] 1 K.B. 829 at p. 838;
Newcastle Breweries Ltd. v. The King [1920] 1 K.B. 854.

Recourse.

Recourse for a declaration that the act and/or decision of the respondents whereby they decided that applicant's right for renewal of certain cheques had been extinguished, is *null* and *void*. 5

Ph. Valiandis, for the applicant.

Gl. Michaelides, for the respondents. 10

Cur. adv. vult.

The following judgment was delivered by:

A. LOIZOU, J.: The applicant by the present recourse seeks a declaration "that the act and/or decision of the respondents whereby they decided that his right for renewal of certain cheques had been extinguished, is *null* and *void* and of no legal effect". 15

The applicant's application dated the 28th July, 1973 for the payment of £68 out of the Redundancy Fund was approved. Together with the relevant notice dated the 11th December, 1973 (*exhibit 'F'*), a draft drawn on the Central Bank of Cyprus, of even date, for the sum of £28, was sent to him by post and he was also informed thereby that the balance of £40 would be paid to him in two instalments. In fact, two more drafts dated the 14th and 18th December, 1973 drawn on the Central Bank of Cyprus for the sum of £20 each, were sent to him by post, each one bearing a notice that it should be presented for payment within six months from its date. 20 25

According to the evidence of Maro Odysseos, an insurance clerk in the Redundancy Fund Section of the Ministry of Labour at the time, these drafts were posted on the same day. Applicant, according to his evidence gave one of them to his mother and it was cashed on the 7th January, 1974, according to the perforated mark appearing thereon. The other two he kept and he cashed at the Co-Operative Stores of his village in June. These drafts were returned to him some two or three weeks later, because neither the seller of the Co-Operative Stores, nor himself, as he put it, knew that they had to be cashed within six months. 30 35

On the 14th September, 1974 applicant's counsel wrote to respondent 1 *exhibit 'A'*, asking that these two drafts on the Central Bank for £28 and £20 respectively, be replaced by new ones, so that they would be cashed. By letter dated the 25th September, 1974 (*exhibit 'B'*) applicant's request was turned down, on the ground that "according to Regulation 13(2) of the Termination of Employment (Redundancy Fund) Regulations, 1968, the right of the applicant to redundancy payment was extinguished as six months had elapsed from the date that the said payment became payable".

Regulation 13(2), reads as follows:-

15 "Όσάκις πρόσωπον δικαιούμενον εις πληρωμήν λόγω πλεονασμοῦ δέν πληρώνεται καθ' ἡν ἡμέραν αὕτη καθίσταται πληρωτέα, τὸ ἐπὶ τῆς πληρωμῆς δικαίωμα του δέν ἀποσβέννυται εἰμὴ μετὰ παρέλευσιν ἕξ μηνῶν ἀπὸ τῆς ἡμερομηνίας ταύτης."

("Whenever a person entitled to a payment on account of redundancy is not paid on the day on which same becomes payable, his right to payment shall not be extinguished until six months after that date.")

20 These Regulations published in Supplement No. 3 to the official Gazette No. 629 of the 1st February, 1968 under Not. No. 74, were made under section 25 of the Termination of Employment Law, 1967 (Law No. 24/67), which as far as material, reads as follows:

25 "25.-(1) The Council of Ministers shall make Regulations for the regulation and administration of the Fund. The Fund shall carry out all its activities in accordance with the Regulations.

(2) The Regulations may prescribe, *inter alia* -

30 (a) the manner in which payments into the Fund are to be made and collected;

(b) the amount of the contribution to be made by the employer in respect of each employee;

35 (c) the manner in which a redundancy payment is to be made to the employee;

(d) penalties for offences in connection with the collection of contributions for and the payment of benefit from the Fund;

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- (e) for the establishment of a Management Committee to operate the Fund and the procedure to be followed by the Management Committee for the exercise of its functions;
- (f) for the investment by the Management Committee of moneys paid into the Fund in accordance with such directions as may from time to time be given by the Minister of Finance; 5
- (g) for the provision of retraining facilities for redundant employees wholly or partly financed from the Fund; 10
- (h) anything which under this Law is required or permitted to be prescribed;
- (i) generally for the better carrying into effect the purposes of the Fund.” 15

The first ground of law relied upon in support of this application, is that Regulation 13(2) is *ultra vires* the enabling enactment, namely, the Termination of Employment Law, 1967.

Learned counsel for the respondents has argued that authority for the enactment of the said Regulation 13(2) is to be found in section 25 as a whole and specifically, in sub-section (1) and sub-section (2) paragraph (c). 20

A review of the legal principles governing the validity of subsidiary legislation is to be found in the cases of *Marangos and Another v. The Municipal Committee of Famagusta* (1970) 3 C.L.R. p. 7 and *Spyrou and Others (No. 2) v. The Republic* (1973) 3 C.L.R. 627. In the first case, Triantafyllides, J. as he then was, had this to say at page 13:— 25

“ When subsidiary legislation—such as the said Regulations—is examined with a view to deciding on a contention that it is *ultra vires*, the answer to this question depends, in every case, on the true construction of the relevant enabling enactment (see Halsbury’s Laws of England, 3rd ed., vol. 36, p. 491, paragraph 743). 30

If there is involved interference with a fundamental right, such as the right to property, any doubt about the extent and effect of the relevant enactment has to be resolved in favour of the liberties of the citizen (see *FINA* 35

(*Cyprus*) Ltd. and *The Republic*, 4 R.S.C.C. 26, at p. 33; *Chester v. Bateson* [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries Ltd. v. The King* [1920] 1 K.B. 854.)”

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5 In the light of the above, one has to turn to the enabling enactment and examine whether in its proper construction it authorizes the making of a particular regulation, whereby a right of an employee to a redundancy payment, can be, by regulation, extinguished, after the lapse of a certain period.

10 The material words in section 25, in my view, are the words “for the regulation and administration of the Fund”, to be found in sub-section (1) thereof, and secondly, the phrase, “the Regulations may prescribe, *inter alia*,(c) the manner in which a redundancy payment is to be made to the employee” and in particular, the words “prescribe” and “manner”.

15 The meaning of the word “regulation” was considered in a line of cases referred to by Triantafyllides, P. in *Spyrou* (No. 2) case (*supra*). In *The Municipal Corporation of the City of Toronto v. Virgo* [1896] A.C. 88, it was held that a statutory power conferred upon a municipal council to make bye-laws
20 for regulating and governing a trade does not, in the absence of an express power of prohibition, authorize the making it unlawful to carry on a lawful trade in a lawful manner. Lord Daye stated at p. 93:—

25 “... the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed”.

30 Two more cases decided on the same line are the *Attorney-General for Ontario v. Attorney-General for the Dominion and the Distillers and Brewers' Association of Ontario*, [1896] A.C. 348 and the case of *Birmingham and Midland Motor Omnibus Co., Ltd. v. Worcestershire County Council* [1967] 1 All E.R. 544. Reference is also made to the case of *Tarr v. Tarr*, [1972] 2 All E.R. 295, where at p. 302, Lord Pearson said:—

35 “In the Oxford English Dictionary under the word ‘regulate’ there is not given any meaning which could possibly include prohibition. Thus, the word ‘regulating’ in itself is not apt to include a power to prohibit. There is not evident reason why the draftsman should not have added the word ‘or prohibiting’ if he meant to include a
40 power to prohibit. If a temporary prohibition were re-

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quired, the duration could have been limited under s. 1(4). Alternatively the words 'or suspending' might have been added".

This line of authorities is, in my view, applicable to the case in hand. The phrase "regulation and administration of the Fund" and in fact a power to regulate and administer, does imply the continued existence of what is to be regulated or administered and cannot be interpreted as including the extinguishment of a right conferred by law. 5

The word "prescribe" which is the English equivalent of the Greek word "καθορίζω" is defined in the Shorter Oxford English Dictionary as meaning, "to write or lay down as a rule or direction to be followed; to limit; to confine within bounds". And the word "manner", in the Greek text "τρόπος" is defined in the same Dictionary as "the way in which something is done or takes place, mode of action or procedure". It is apparent from the meaning of the aforesaid expressions and words, that the regulation and administration of the Fund by prescribing the manner in which a redundancy payment is to be made to the employee, does not include, in any way, the power to made a regulation for the extinguishment of the right to payment after the expiration of six months from the date it became payable. 10 15 20

On a true construction, therefore, of section 25 and in particular sub-sections (1) and (2)(c) and having regard to the meaning of the material words in the said statutory provision, I have come to the conclusion that Regulation 13(2) could not validly be enacted under this section. The Law was enacted for the sole purpose of benefiting the employees and relieve them from the consequences of dismissal on the ground of redundancy and nothing but clear and unambiguous words in the enabling section could deprive them of the rights conferred by Law. Any doubt on the matter about the extent and effect of the said enactment, has to be resolved in favour of the right of the citizen, and as in this case, a proprietary one. (Vide *FINA (Cyprus) Ltd. v. The Republic*, 4 R.S.C.C. p. 26 at p. 33 and *Chester v. Bateson* [1920] 1 K.B. 829, at p. 838. Also, *Newcastle Breweries Ltd. v. The King* [1920] 1 K.B. 854). 25 30 35

Support for this interpretation may be derived from analogous situations in England. Section 52 of the National Insurance Act, 1965 which is the empowering section for making Regulations as "to the time and manner of payment of benefit" clear- 40

ly refers to “the time of payment”. Furthermore, in sub-section (2) para (b) thereof, there is express provision that Regulations made under that section may provide (b) for extinguishing the right to any sum payable by way of benefit where payment thereof is not obtained within six months or such shorter period as may be prescribed from time to time at which that sum is receivable in accordance with the regulations”.

It was on the strength of this empowering enactment that in the Regulations made for its implementation, the manner by which the extinguishment of the right to sums payable by way of benefit not obtained within the prescribed period was included (see Halsbury’s Statutory Instruments, Vol. 15, 2nd re-issue, pp. 186, 187).

The fact that on the draft there was a note that it should be presented within six months, does not in any event, change the situation, as a cheque is payable on demand at any time within the period prescribed by law. As pointed out in Paget’s Law of Banking, p. 222,

“ No doubt, bankers decline to pay a cheque they consider stale, that is, one not presented within periods varying from six months to a year after issue; but it has never been suggested that this releases the drawer. It is simply dishonoured, though the drawer might not be able to sue the banker for damage to credit, the refusal to pay being justified by the custom of bankers.”

For all the above reasons and having concluded that Regulation 13(2) of the Termination of Employment (Redundancy Fund) Regulations, 1968 is *ultra vires* the empowering enactment and therefore invalid, the present recourse succeeds. Respondents to pay £15 against the costs of the applicant.

*Sub judice decision annulled.
Order for costs as above.*