

1982 October 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STAVROS EVRIPIDES,

*Applicant,*

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

*Respondent.*

(Case No. 387/79).

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*Administrative Law—Administrative act or decision—Validity—  
 Administrative process requiring action by two distinct organs  
 —A collective organ empowered to express a formal opinion  
 and another organ empowered to take the final decision after  
 examining correctness of such opinion—Organ responsible for  
 reaching final decision should, unless a law otherwise provides,  
 be different from, and should not participate in the functioning  
 of, the organ which expresses the formal opinion—Promotions  
 by Board of respondent Electricity Authority, after considering  
 recommendations of Sub-Committee which was composed, inter  
 alia, of the Chairman and two members of the Board—Sub-  
 Committee not an independent collective organ outside the Board  
 empowered to take a decision correctness of which had to examined  
 by the Board as a separate organ but was part and parcel of the  
 Board—Participation at meeting of Board, which took sub judice  
 decision, of the above members of Sub-Committee not amounting  
 to a material irregularity vitiating the administrative process  
 which resulted in the sub judice promotion.*

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The applicant in this recourse challenged the validity of the respondent authority to promote the interested party to the post of Engineer's Assistant, Grade II, in preference and instead of the applicant. All applications for the above post were considered by the joint Advisory Committee for Promotions and Regradings which recommended for promotion three

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5 candidates, including the applicant and the interested party. The report of this Committee was submitted by the Board of the respondent Authority to the standing Sub-Committee on Staff Matters which was composed of the Chairman and two members of the Board of the respondent Authority and the General Manager. The standing Sub-Committee after considering the report of the Advisory Committee decided to recommend the interested party as the best candidate for the post in question. The sub judge promotion was made by the Board of the respondent Authority, after considering the report of the Advisory Committee and the above recommendation of the standing Sub-Committee.

15 Counsel for the applicant contended that the participation at the meeting of the Board at which the sub judge decision was taken, of the three members of the Board who as members of the standing Sub-Committee on Staff Matters examined the report of the Joint Advisory Committee for Promotions and Regradings and made recommendations to the Board on the subject matter, amounts to a violation of one of the principal rules of natural justice in that they acted as Judges in their own cause.

25 Counsel for the respondent contended that the Sub-Committee of the Board was not a body to take a final decision on the matter but it was only a section of the Board of the Authority to which the Full Board had delegated the task of considering the recommendations of the Joint Advisory Committee for Promotions and Regradings, which was the appropriate body under the schemes of service to make the recommendations and select three candidates for each post and put them in a short list, and of submitting their recommendations to the Board.

35 *Held*, that though it is a principle of administrative law that where the administrative process concerned requires action on the part of two distinct organs—(one of them being a collective organ empowered to express a formal opinion and the other of them being the organ which takes the final decision after examining the correctness of such opinion)—the organ which is responsible for reaching the final decision should, unless a Law otherwise provides, be different from, and should not participate in the functioning of the organ which expresses the formal opinion, so that the organ taking the final decision can reach

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its own independent conclusion in the present case, the following distinction has to be drawn: The Sub-Committee on Staff Matters was not an independent collective organ outside the Board empowered to take a decision the correctness of which had to be examined by the Board as a separate organ, but was part and parcel of the Board, a section of it, to which the Board entrusted the task of considering and scrutinizing the report and the recommendations of the Joint Advisory Committee for Promotions and Regradings; that the preliminary examination by this Sub-Committee of the applications and of the recommendations of the Joint Advisory Committee for Promotions and Regradings was a matter of internal arrangement of the Board of the respondent Committee for the carrying out in a more effective and expedient way the administration of the Authority; that the recommendation of the Sub-Committee came before the full session of the Board for consideration and exhaustive discussion as it appears from the minutes of the meeting at which the final decision was taken and at which each member was free to vote in the light of such discussion; and that, therefore, the participation at the meeting of the Board at which the sub judice decision was taken of the Chairman and the two members of the Board who were members of the Standing Sub-Committee on Staff Matters, did not amount to a material irregularity vitiating the administrative process which resulted in the promotion challenged by this recourse; accordingly the recourse must fail.

*Application dismissed.*

Cases referred to:

- Kanda v. Government of Malaya* [1962] A.C. 322 at p. 337;  
*Kazamias v. Republic* (1982) 3 C.L.R. 239;  
*Mitidou v. C.Y.T.A.* (1982) 3 C.L.R. 555;  
*Savoulla and Others v. Republic* (1973) 3 C.L.R. 706 at pp. 712, 713.

**Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Engineer's Assistant, Grade II, in preference and instead of the applicant.

*L. Clerides* with *N. Clerides*, for the applicant.

*G. Cacoyannis*, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant seeks by this recourse a declaration that the decision of the respondent to promote Georghios Marneros to the post of Engineer's Assistant, Grade II, as from the 1st September, 5 1979 in preference to and instead of the applicant, should be declared null and void and of no effect whatsoever.

The grounds of law on which the recourse was based as set out in the application were as follows:

10 "It is contended that having regard to the qualifications, merit, ability, experience, recommendations of Head of Department, as well as all the other relevant considerations, respondents failed in their paramount duty to choose the best candidate available for promotion, i.e. the applicant, and hence by promoting the interested party in preference 15 and instead of the applicant, respondents acted in circumstances amounting to an abuse of power and their decision should in consequence be declared null and void and of no effect whatsoever."

20 The respondent Authority opposed the application and the following grounds of law are set out in support thereof:

- 25 "1. The Respondents have acted lawfully throughout.
2. The decision complained of in the present recourse is intra vires the Respondents' powers and has been exercised according to the requirements of the service in their absolute discretion.
3. The Respondents' discretion has been exercised in a valid manner after all relevant considerations had been taken into account and due weight had been given to all material facts.
- 30 4. The Respondents have not acted in abuse or in excess of their power but in the proper exercise of such powers.
5. The application disclosed no grounds justifying the revocation of the decision complained of."

35 In the course of the hearing, counsel for applicant abandoned his original ground of law and advanced a new ground on which he sought to rely in support of his prayer for the cancellation

of the promotion of the interested party. Counsel for respondent Authority did not object to such course. Such new ground was that the participation of three members of the Board of the respondent Authority, which made the promotion, in the Standing Sub-Committee on Staff Matters, which made the recommendations as to the candidates for promotion, amounts to a violation of the rules of natural justice and in consequence renders the sub judice decision null and void. 5

The facts of the case are, briefly, as follows:

The applicant is an employee of the respondent Authority holding the post of Engineer's Technical Assistant since 1st June, 1971. In the summer of 1979 there was a vacancy in the post of Engineer's Assistant, Grade II at Moni Power Station. Such vacancy was published in the Staff Vacancy Notice No. 8/79 on 24.5.1979 and applicant was one of the candidates for promotion to such post. All applications were considered by the Joint Advisory Committee for Promotions and Regradings and its recommendations are contained in a submission sent to the Board of the Authority, copy of which was attached to the Opposition as exhibit 'A'. By such submission the Joint Advisory Committee recommended as the best candidate for promotion to such post the applicant and two other candidates, namely, Michael Hj.Antoniou and Georghios Marneros (the interested party in this recourse). In the report of the Joint Advisory Committee for Promotions and Regradings, all three candidates are described as possessing the same ability and experience for promotion to such post and as being equally fit for promotion, but in the case of Georghios Marneros the following additional statement appears in comparison with the other two candidates: "He has acquired experience in the control room of the station of Dhekelia." 10 15 20 25 30

The Board of the respondent Authority submitted such report to the Standing Sub-Committee on Staff Matters which was composed of the Chairman and two members of the Board of the respondent Authority and the General Manager and at the meeting of which the Deputy General Manager, the Chief Personnel Officer and the Secretary of the Authority were in attendance. The Sub-Committee met on the 5th September, 1979 and according to the minutes of their meeting they considered the report of the Joint Advisory Committee for Pro- 35 40

motions and Regradings and after an exchange of views and having considered all applications, and all matters relevant thereto, decided to recommend Georghios Marneros as the best candidate for promotion to such post.

5 The Board of the respondent Authority considered the report of the Joint Advisory Committee for Promotions and Regradings and, also, the recommendations of the Standing Sub-Committee on Staff Matters at its meeting of the 26th  
10 September 1979, at which the legal adviser of the Board, the General Manager, the Secretary and the Chief Personnel Officer were in attendance, and according to the minutes of such meeting copy of which was attached to the opposition as Annex 'C' "after an exchange of views and having considered all applications submitted in response to Staff Vacancy Notice No.  
15 8/79, except item 5(b) and having taken into consideration the applicants' experience, merit, ability, years of service with the Authority, seniority in the present post, qualifications in accordance with the relevant schemes of service, conduct, age, general record and having compared the above criteria for  
20 promotion with the same criteria of those recommended for promotion and after taking into consideration the recommendations of the Heads of the Departments, the recommendations of the Chief Engineer & General Manager, the unanimous proposal of the Joint Advisory Committee for Promotions &  
25 Regradings in respect of the filling of the above-mentioned vacancies and the recommendations of the Standing Sub-Committee on Staff Matters " resolved unanimously to promote Georghios Marneros, to the post of Engineer's Assistant, Grade II, Moni Power Station. It is against such decision  
30 that this recourse is directed.

The main ground on which counsel for applicant argued the case was the new ground advanced at the hearing, that the participation at the meeting of the Board at which the sub  
35 justice decision was taken, of the three members of the Board who as members of the Standing Sub-Committee on Staff Matters examined the report of the Joint Advisory Committee for Promotions and Regradings and made recommendations to the Board on the subject matter, amounts to a violation of one of the principal rules of natural justice in that they acted as  
40 Judges in their own cause.

Counsel for the respondent contended that the Sub-Com-

mittee of the Board was not a body to take a final decision on the matter but it was only a section of the Board of the Authority to which the Full Board had delegated the task of considering the recommendations of the Joint Advisory Committee for Promotions and Regradings, which was the appropriate body under the schemes of service to make the recommendations and select three candidates for each post and put them in a short list, and of submitting their recommendations to the Board. Sitting as members of the Board, they were free to change their minds and decide in the light of exchange of views and other matters put before the meeting of the full session of the Board of the Authority before the final decision was taken.

The rules of natural justice which may, briefly, be expressed in the words that "no man shall be a judge in his own cause and both sides shall be heard" have been interpreted by the Courts to mean impartiality and fairness on the part of a judge in the exercise of his judicial function or on the part of an administrator in the exercise of his judicial or quasi judicial function.

In *Kanda v. Government of Malaya* [1962] A.C. 322, Lord Denning at p. 337 summarised such rules as follows:

"The Romans put them in the two maxims; Nemo iudex in causa sua: and Audi alteram partem. They have recently been put in the two words, Impartiality and Fairness."

In two recent cases before this Court (see *Kazamias v. The Republic* (1982) 3 C.L.R. 239, and *Mitidou v. C.Y.T.A.* (1982) 3 C.L.R. 55) I had the opportunity of dealing extensively and reviewing a number of cases and legal authorities on the rules of natural justice which I need not repeat in my deliberation in the present recourse.

In *Savoulla and others v. The Republic* (1973) 3 C.L.R. 706 at pp. 712, 713 (per Triantafyllides, P.) it was said:

"It is correct that it is a principle of administrative law that where the administrative process concerned requires action on the part of two distinct organs - (one of them being a collective organ empowered to express a formal opinion and the other of them being the organ which takes the final

5 decision after examining the correctness of such opinion) - the organ which is responsible for reaching the final decision should, unless a Law otherwise provides, be different from, and should not participate in the functioning of the organ which expresses the formal opinion, so that the organ taking the final decision can reach its own independent conclusion (see, inter alia, the decisions of the Council of State in Greece in Case 2764/1964 and 2517/1967)."

10 In the present case, the following distinction has to be drawn :  
The Sub-Committee on Staff Matters was not an independent collective organ outside the Board empowered to take a decision the correctness of which had to be examined by the Board as a separate organ, but was part and parcel of the Board, a section of it, to which the Board entrusted the task of considering and  
15 scrutinizing the report and the recommendations of the Joint Advisory Committee for Promotions and Regradings. The preliminary examination by this Sub-Committee of the applications and of the recommendations of the Joint Advisory Committee for Promotions and Regradings was a matter of  
20 internal arrangement of the Board of the respondent Committee for the carrying out in a more effective and expedient way the administration of the Authority. The recommendation of the Sub-Committee came before the full session of the Board for consideration and exhaustive discussion as it appears from the  
25 minutes of the meeting at which the final decision was taken and at which each member was free to vote in the light of such discussion.

- The fact that a Board for the purpose of efficient and expedient carrying out of its duties entrusts to a sub-committee of  
30 its members the task of considering a particular topic and report or make recommendations to the full Board, does not constitute such sub-committee a distinct organ, participation in which disentitles the members so participating from attending the meeting of the Board at which a final decision on the matter  
35 is to be taken.

In the circumstances of the present case, I have reached the conclusion that the participation at the meeting of the Board at which the sub judice decision was taken of the Chairman and the two members of the Board who were members of the



Standing Sub-Committee on Staff Matters, did not amount to a material irregularity vitiating the administrative process which resulted in the promotion challenged by this recourse.

In the result, this recourse fails and is hereby dismissed but in the circumstances I make no order for costs. 5

*Recourse dismissed. No order as to costs.*