1984 October 13

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS SOPHOCLEOUS,

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondents.

(*Case No.* 232/82).

Disciplinary offences—Public Corporations—Discipline at, should be exercised in accordance with settled code, having legislative effect—Disciplinary jurisdiction over employee of Public Corporation—Exercised under draft disciplinary Code which was not published in the official Gazette or promulgated as a piece of Secondary legislation—Since rule-making power was entrusted to the Corporation, by virtue of section 3 *of the Public Corporations (Regulation of Personnel Matters) Law,* 1970, *publication was essential for its validity—Therefore disciplinary jurisdiction was exercised in a manner contrary to law and outside its provisions—And every act founded thereon was tainted with the illegality of the procedure followed.*

Subsidiary legislation—Need for publication of—Article 82 *of the Constitution and section* 7 *of the Interpretation Law, Cap.* 1.

The applicant, an employee of the respondents, was tried for a disciplinary offence, convicted and ordered to retire. Disciplinary jurisdiction was exercised in accordance with a decision of the Board of the Authority, dated 11.6.1974 (Decision 3077), whereby disciplinary power over employees of the Authority would thereafter be exercised along the lines earmarked in a draft disciplinary code under consideration by the Authority. Neither the above decision nor the draft rules temporarily adopted thereby were published in the gazette or promulgated as a piece of secondary legislation.

Counsel for the applicant mainly contended that the disciplinary proceedings against the applicant were wholly abortive because jurisdiction was assumed and exercised contrary to the provisions of the law, namely s.3 of the Public Corporations (Regulation of Personnel Matters) Law, 1970 (61/70). In accordance with s.3 of this Law disciplinary competence by public corporations should be exercised in accordance with Regulations to be approved by individual corporations. In the submission of applicant, disciplinary jurisdiction could not be exercised in any manner other than in accordance with Regulations properly enacted.

Held, that discipline should be exercised in accordance with a settled code approved in advance; that discipline at public corporations is as important as discipline in other branches of public service; that it is a matter that concerns not only the authority but the public at large; that it was, therefore, in the nature of things proper that the House of Representatives should ordain that discipline at public corporations should be exercised in accordance with a settled code having legislative effect; that since rule-making power was entrusted to the corporation, like every piece of subsidiary legislation, publication was essential for its validity; that in fact in the case of subsidiary legislation the need for publication is all the greater in order to ensure that such legislation is confined within the bounds set by the enabling law; that, therefore, disciplinary jurisdiction was exercised, in this case, in a manner contrary to law and outside its provisions, with the corollary that every act founded thereon, like the sub judice decision, was tainted with the illegality of the procedure followed; and that, accordingly, the sub judice decision must be set aside.

Sub judice decision annulled.

Cases referred to:

Constantinou v. *CY.T.A.* (1980) 3 C.L.R. 243 at p. 252;

Arsalides v. *CY.T.A.* (1983) 3 C.L.R. 510;

Ploussiou v. *Central Bank* (1983) 3 C.L.R. 398;

Vakis v. *Republic* (1984) 3 C.L.R. 952.

Recourse.

Recourse against the decision of the respondents whereby

applicant was convicted of a disciplinary offence and ordered to retire.

A.S. Angelides, for the applicant.

G.P. Cacoyiannis, for the respondents.

5 *Cur. adv. vult.*

PIKIS J. read the following judgment. The first and foremost issue is the legality of the rules or practice of the Authority upon which applicant was investigated and, subsequently tried, for a disciplinary offence. Ultimately, he was convicted and 10 ordered to retire. Disciplinary jurisdiction was exercised in accordance with a decision of the Board of the Authority, dated 11.6.1974 (Decision 3077), whereby disciplinary power over employees of the Authority would thereafter be exercised along the lines earmarked in a draft disciplinary code under 15 consideration by the Authority. Neither the above decision nor the draft rules temporarily adopted thereby were published in the gazette or promulgated as a piece of secondary legislation.

It is the case for the applicant that disciplinary proceedings against him were wholly abortive because jurisdiction was assu- 20 med and exercised contrary to the provisions of the law, namely s.3 of the Public Corporations (Regulation of Personnel Matters) Law, 61/70. In accordance with s.3, disciplinary competence by public corporations should be exercised in accordance with Regulations to be approved by individual corporations. In 25 the submission of applicant, disciplinary jurisdiction could not be exercised in any manner other than in accordance with Regulations properly enacted. Certainly, there was no warrant in law to bypass the provisions of the law by evolving, as the respondents apparently did, a procedure in substitution thereof. 30 In essence, s.3 delegated to the respondent Authority rule-making power in relation to disciplinary proceedings and, as such, it ought to have been validated, like any other law, by publication in the official gazette.

In reply, respondents submitted, the exercise of discipline 35 over employees was an internum of the Authority and, like every internal act, it need not see light by publication. They cited the decision of *A. Loizou, J.*, in *Constantinou* v. *CY.T.A.**

* (1980) 3 C.L.R. 243, 252;

as direct authority for the position adopted. They added, the procedure they followed was fashioned to the needs of natural justice and took full account of the rights of employees of public bodies. The applicant disputed that the rules of natural justice were followed in his case, contending they were infringed 5 by the participation in the deliberations of the Authority of the officer who carried out the preliminary investigation, and other persons that had no locus standi in the decision-making process of the respondents.

The effect of *Constantinou*, supra, was somewhat reduced by 10 the outcome of the appeal. The decision was revoked and the Authority undertook to reconsider the matter. So far as may be gathered from the record, revocation of the act sustained at first instance, was made with the sanction of the Full Bench of the Supreme Court. Following the outcome of the appeal 15 in *Constantinou*, a disciplinary code was enacted by CY.T.A. by publication in the gazette*. The decision in *Constantinou* comes in direct conflict with another decision of the Supreme Court of first instance, namely that of *Stylianides, J.*, in *Arsalides* v. *CY.T.A.*** In *Arsalides*, supra, it was held, as I construe 20 the case, that Regulations of a public corporation governing discipline, are not an internum of the Authority but a matter of public law that cannot be validated except by publication in the official gazette.

The decision in *Arsalides* was foreshadowed by another deci- 25 sion of this Court, that of *Ploussiou* v. *The Central Bank****, that laid down that as a matter of constitutional and statute law, notably the provisions of Article 82 of the Constitution and s.7 of the Interpretation Law—Cap. 1, respectively, publication is a condition precedent to the validity of every law, 30 regulation, bye-law and, generally, every legislative act. In that case, I had opportunity to review the need for publication of legislative instruments under the Constitution and the law****. Section 7—Cap. 1 of the Interpretation Law, categorically lays down that every instrument made or issued under the 35

* See, *Official Gazette of* 26.7.1982—*Notification* 220.

** (1983) 3 C.L.R. 510.

*** (1983) 3 C.L.R. 398.

**** See, also, *Vakis* v. *The Republic*, (1984) 3 C.L.R. 952.

authority of any law must be published as a condition precedent to its validity. So, in terms of the law, authority to legislate for the regulation of discipline in public corporations, was delegated to the corporations themselves. The law laid down 5 two conditions for the exercise of disciplinary jurisdiction over the personnel of the public corporations:-

(a) Discipline should be exercised in accordance with a settled code approved in advance. Discipline at public corporations is as important as discipline in 10 other branches of public service. It is a matter that concerns not only the Authority but the public at large. It was, therefore, in the nature of things proper that the House of Representatives should ordain that discipline at public corporations should be exer- 15 cised in accordance with a settled code having legislative effect.

(b) Rule-making power was entrusted to the corporation. Like every piece of subsidiary legislation, publication was essential for its validity, in fact in the case of sub- 20 sidiary legislation, as I pointed out in *Ploussiou* and *Vakis*, the need for publication is all the greater in order to ensure that such legislation is confined within the bounds set by the enabling law.

Disciplinary jurisdiction was exercised, in this case, in a 25 manner contrary to law and outside its provisions, with the corollary that every act founded thereon, like the sub judice decision, was tainted with the illegality of the procedure followed. In view of the outcome of this recourse, it is unnecessary to examine any other aspect of the case bearing on the merits of 30 the complaint and alleged breaches of natural justice.

In the light of the above, the recourse succeeds. The sub judice decision is set aside. Let there be no order as to costs.

Sub judice decision annulled. No order as to costs.