

1985 April 19

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANASTASSIOS FANIS.

Applicant,

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondent.

(Case No. 106/79).

Subsidiary Legislation—Cyprus Broadcasting (Advisory Selection Committee) Regulations—Made by virtue of section 12 of the Cyprus Broadcasting Corporation Law, Cap. 300A—Not approved by the Council of Ministers as provided by the empowering section—And not published in the gazette—Invalid—Appointments made thereunder, also, invalid—Section 7 of the Interpretation Law, Cap. 1—Section 10 of Cap. 300A gives no power to the Corporation to make Regulations.

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10 *Collective agreement—Between trade union and Public Corporation—Lacks the force of Law unless adopted as part of the Regulations of the Corporation.*

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The applicant in this recourse challenged the validity of the decision of the respondents to promote or appoint the interested parties or any of them to the post of Technical Superintendent instead of himself.

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In the course of the hearing learned counsel for the applicant limited his case on one ground of Law only that of the validity of the regulations on the basis of which the promotions were made.

The power to make regulations relating to the conditions of service of servants of the Corporation is derived

from s.12* of the Cyprus Broadcasting Corporation Law, Cap. 300A which provides, *inter alia*, that the Corporation may, with the approval of the Council of Ministers make regulations relating to the appointment, promotion and dismissal of the servants of the Corporation. In fact such Regulations ** were made with the approval of the Council of Ministers and were published in the Official Gazette in 1966. 5

Subsequently the respondents set up an Advisory Selection Committee. This Committee was set up under the provisions of some regulations which are cited at para. 1 thereof, as The Cyprus Broadcasting Corporation (Advisory Selection Committee) Regulations which also made provision as to its composition and its functions generally. It appeared from the preamble that the scope of the establishment of this Committee was to assist the Corporation in the selection of the best available candidates for appointment or promotion to any existing vacant post in the Corporation which the Corporation could fill under the provisions of s. 10 of the Law. These Regulations were neither approved by the Council of Ministers nor were they published in the official Gazette. 10 15 20

Held, that the Cyprus Broadcasting Corporation (Advisory Selection Committee) Regulations even if they had otherwise been properly made, they would be invalid as, contrary to the provisions of section 7 of the Interpretation Law, Cap. 1 they were not published in the Gazette; and that since they were not valid, both the establishment of the Advisory Selection Committee and the appointments made under the provisions of such regulations were also invalid; accordingly the recourse must succeed and the sub judice decision be annulled. 25 30

Held, further, (1) that section 10 of Cap. 300A gives no power to the Corporation to make Regulations.

(2) That the provisions of Collective Agreements lack 35

* Section 12 is quoted at p. 778 post.

** These are the Cyprus Broadcasting Corporation (Conditions of Service) Regulations, 1966.

the force of Law unless adopted as part of the Regulations of the Corporation.

Sub judice decision annulled.

Cases referred to:

- 5 *Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195;
 Kontemeniotis v. C.B.C (1982) 3 C.L.R. 1027;
 Ploussiou v. Central Bank of Cyprus (1968) 3 C.L.R. 398;
 Arsalides v. C.Y.T.A. (1983) 3 C.L.R. 510;
- 10 *Kofteros v. Cyprus Electricity Authority* (1985) 3 C.L.R. 394;
 Theodorides v. Central Bank of Cyprus (1985) 3 C.L.R. 721.

Recourse.

- 15 Recourse against the decision of the respondent to promote the interested parties to the post of Technical Superintendent in preference and instead of the applicant.
- C. Loizou* for *E. Efstathiou*, for the applicant.
- 20 *K. Chrysostomides* with *A. Spyridakis* for *G. Polyviou*, for the respondent.

Cur. adv. vult.

- 25 L. LOIZOU J. read the following judgment. The applicant by this recourse prays for a declaration that the decision of the respondents to promote or appoint the interested parties or any of them to the post of Technical Superintendent instead of himself is null and of no legal effect.

- 30 In the course of the hearing learned counsel for the applicant limited his case on one ground of Law only that of the validity of the regulations on the basis of which the promotions were made.

The power to make regulations relating to the conditions of service of servants of the Corporation is derived

from s.12 of the Cyprus Broadcasting Corporation Law, Cap. 300A which reads as follows:

- “12. The Corporation may, with the approval of the Governor, make regulations generally relating to the conditions of service of servants of the Corporation and in particular, but without prejudice to the generality of the foregoing, may make regulations relating to—
- (a) the appointment, promotion, dismissal, discipline, remuneration and leave of, and the security to be given by, such servants;
 - (b) appeals by such servants against dismissal or other disciplinary measures;
 - (c) the grant of pensions, gratuities and other retiring allowances to such servants and their dependants; and the grant of gratuities to the estates or dependants of deceased servants of the Corporation;
 - (d) the establishment and maintenance of medical benefit funds, superannuation funds or provident funds, and the contributions payable thereto and the benefits receivable therefrom.”

It appears that as far back as 1960 the Corporation, acting under the provisions of the above section, made regulations which were approved by the Council of Ministers in accordance with the requirements of the section. For some unknown reason, however, these regulations were not published in the Gazette until 1966. These are the Cyprus Broadcasting Corporation (Conditions of Service) Regulations, 1966, published in Supplement No. 3 to the Gazette of the 7th April, 1966. Part II of these regulations, as it appears from its heading, make provision for the establishment of posts, appointments, retirements, penalties and dismissals.

It would appear that some time after the publication of the above regulations, probably in 1972, but this is not clear, the respondents set up an Advisory Selection Committee. This Committee was set up under the provi-

sions of some regulations which are cited at para. 1 thereof, as The Cyprus Broadcasting Corporation (Advisory Selection Committee) Regulations (to which I shall hereinafter refer to as the Selection Committee Regulations) which also make provision as to its composition and its functions generally. It appears from the preamble that the scope of the establishment of this Committee was to assist the Corporation in the selection of the best available candidates for appointment or promotion to any existing vacant post in the Corporation which the Corporation could fill under the provisions of s. 10 of the Law. The regulations adopted the definitions set out in regulation 2 of the 1966 regulations, made under s. 12 of the Law, with the exception that any reference made therein to "The Public Service Commission" was substituted by "The Board of the Corporation". This, presumably, was done as a result of the enactment of the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law 61/70). The enactment of this Law, as stated in its preamble, purports to have been based on the principle of the doctrine of necessity as expounded in *The Attorney-General of the Republic v. Mustafa Ibrahim & Others*, 1964 C.L.R. 195. But as the validity of this Law was not raised or argued—in fact the Law was not mentioned at all—I need not concern myself with this matter in the present case.

Under regulation 2 of the Selection Committee Regulations the competence of the Committee was for the selection of candidates for promotion posts and first entry and promotion posts but by a subsequent amendment it was extended to posts of "first appointment" also.

The composition of the Committee, as stated in regulation 2 of the same regulations and the subsequent amending regulations, consisted of three members of the Corporation and three members of the trade unions.

On the 23rd October, 1978, this Selection Committee held a meeting with a view to examining applications made in response to a notice published "within the Corporation", on the 30th June, 1978, for the filling of four vacant posts of Technical Superintendent in the department of Technical Services. The minutes of this meeting have been produced and are exhibit 3.

There were twelve applicants. After examining the applications, the Committee decided to call all candidates for a personal interview on the 27th October, 1978. On the latter date the interviews took place and the Committee decided that six of the candidates, including the applicant in this case and the interested parties, were suitable for promotion. On the 31st October, 1978, the Director of Technical Services forwarded a letter (exhibit 1) to the Director-General of the Corporation informing him that the interviews of the candidates by the Selection Committee had taken place and that the Selection Committee put questions to the candidates with a view to testing their progress and practical knowledge; and that the questions were put in such a way so as to ascertain also whether they were in a position to apply their theoretical knowledge in practice. In the last paragraph, after stating that the object of the letter was to advise as to who of the six candidates selected by the Selection Committee, whose names were mentioned in the letter, were the most suitable, he goes on to give four names in order of merit including the applicant and two of the interested parties. Finally the Board of the Corporation met on the 14th December, 1978, and appointed the four interested parties to the vacant posts (exhibit 2).

As stated earlier on, learned counsel for the applicant rested his case on the ground of the validity of the regulations (exhibit 4). He submitted that the amendments to the regulations were irregular because the provisions of s. 12 of the Law were not complied with in that the approval of the Council of Ministers was not obtained and that if the amendments were not valid the promotions also were not valid having been based on regulations that could not be invoked. Counsel also submitted that the setting up of the Selection Committee was irregular.

It seems to me that learned counsel mistook the Selection Committee Regulations as being an amendment of the Cyprus Broadcasting Corporation (Conditions of Service) Regulations, 1966, which is not the case as the Selection Committee Regulations purport to have a separate and distinct entity.

Learned counsel for the respondents, on the other hand,

submitted that the Selection Committee Regulations were made under the provisions of s. 10 of the Law and also under clause 6 of a Collective Agreement (exhibit 5) between the Director-General of the C.B.C. and the trade unions and, therefore, counsel argued, since the regulations were not made under s. 12 of the Law the approval of the Council of Ministers was not required. He further submitted that the recommendations of the Selection Committee being of an advisory nature the Board of the Corporation was not bound by them and cited s. 11 of the Selection Committee Regulations in support of his argument. With regard to this regulation it should be recorded that it contains no such provision. On the contrary the regulation immediately following i.e. regulation 12 provides that the Board elects the persons to be appointed or promoted from those recommended for promotion by the Selection Committee with the proviso that the Board may, before effecting a promotion, call the persons selected by the Committee for an interview.

In the present case they did not choose to follow this course but relied on the report of the Selection Committee (exhibit 3), the report of the Director of Technical Services (exhibit 1) and the views of the Director-General.

Section 10 of the Law to which reference has been made by learned counsel for the respondents reads as follows:

“10. The Corporation shall appoint such servants as it may deem necessary for the discharge of its functions under this Law upon such terms and conditions of service as it may determine.”

Quite obviously this section gives no power to the Corporation to make regulations; and clause 6 of the Collective Agreement to which I have been referred provides that the procedure to be followed in filling a vacant post should be that which is specified in the Selection Committee Regulations; and adopts such regulations as part of the Collective Agreement.

So, even assuming that this Collective Agreement could have the force of Law, the clause referred to would not give any powers to make regulations. But, be that as it may,

the provisions of Collective Agreements lack the force of Law unless adopted as part of the Regulations. (See. *Kon-temeniotis v. The C.B.C* (1982) 3 C.L.R. 1027).

I, therefore, find myself quite unable to agree with learned counsel for the respondents that these controversial regulations were or could, legally, have been made either under the section of the Law or the clause of the Collective Agreement suggested by counsel. The only section under which regulations relating to appointment or promotion of servants of the Corporation could be made is s. 12 and under its provisions the approval of the Council of Ministers is required for their validity.

It is not in dispute that the Selection Committee Regulations were neither approved by the Council of Ministers nor were they published in the Gazette. So, even if they had otherwise been properly made, they would be invalid as, contrary to the provisions of s. 7 of the Interpretation Law, they were not published in the Gazette. (See in this respect *Ploussiou v. The Central Bank of Cyprus* (1983) 3 C.L.R. 398; *Arsalides v. CY.T.A.* (1983) 3 C.L.R. 510; *Kofteros v. The Cyprus Electricity Authority* (not yet reported) * and *Theodorides v. The Central Bank of Cyprus* (also not yet reported)). **

In the light of the above I am driven to the conclusion that the Selection Committee Regulations were not valid and, therefore, both the establishment of the Advisory Selection Committee and the appointments made under the provisions of such regulations were also invalid.

In coming to this conclusion I do not lose sight of the fact that the Corporation may, under the provisions of s. 20 of the Law, appoint advisory committees; but the purposes of the appointment of such committees and their functions are limited to certain other matters such as the content of the programmes broadcast and matters concerning broadcasting services and certainly do not extend to matters relating to the conditions of service of servants of the Corporation. Such provisions are, therefore, irrelevant and inapplicable in so far as the present case is concerned.

* Now reported in (1985) 3 C.L.R. 394.

** Now reported in (1985) 3 C.L.R. 721.

For all the above reasons this recourse must succeed and the sub judice decision be annulled. In all the circumstances I make no order as to costs.

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*Sub judice decision annulled.
No order as to costs.*