

1986 December 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ASSOCIATION OF CONTRACTORS FOR
ELECTRICAL INSTALLATIONS,

Applicant,

v.

1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF COMMUNICATIONS
AND WORKS.

Respondents.

(Case No. 148/76).

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- 5 *Acts or decisions in the sense of Article 146.1—Acts of legislative nature—Not within the ambit of Article 146.1—Test applicable for determination of nature of an act—The Electricity (Amendment) Regulations 1976—They are of a legislative nature—The Order made by the Minister of Communications and Works under regs. 53(3)(b) and 5 (b) of said Regulations and published on 2.4.1976—A regulatory order—Outside ambit of Article 146.1—Neither the Regulations nor the Order can be challenged directly*
- 10 *by a recourse.*
- 15 *Constitutional Law—Right to exercise a profession—Constitution Article 25—The Electricity (Amendment) Regulations, 1976 (published on 12.3.1976)—The Order made by the Minister of Communications and Works under regs. 53(3) (b) and 5(b) and published on 2.4.1976—Not repugnant to or inconsistent with Article 25—Restrictions imposed absolutely necessary in the interests of public safety for the protection of the rights of others and in the public interest.*
- 20 *Electricity—The Electricity Law, Cap. 270—Section 10—The*

Regulations made in virtue of s. 10 and published on 12.3.1976—Not ultra vires enabling enactment.

In virtue of its powers under section 10 of the Electricity Law, Cap. 170 the Council of Ministers enacted the Electricity (Amendment) Regulations*. Regulations 53(3) (b) and 5(b) empowered the Minister of Communications and Works to issue Orders prescribing the limits within which certain classes of Electrical Engineers can draw plans and prepare studies. The Minister acting under the said Regulations issued an Order, which was published on 12.3.1976, prescribing the limits for the drawing of plans and studies by (a) Electrical Engineers, third grade, Senior Electricity Technicians and Electrical Apparatus Technicians.

This recourse is directed against the validity of the said Regulations and the said Order of the Minister. The applicants submitted inter alia, that the Regulations are repugnant to Article 25 of the Constitution and in any event ultra vires section 10 of Cap. 170.

Held, dismissing the recourse: (1) The test applicable in order to determine the nature of an act is not the terminology employed, but its essential nature. The essential nature of the sub judice Regulations is to regulate legislatively the matters referred to therein. It follows that they are of a legislative nature and, therefore, do not come within the ambit of Article 146.1 of the Constitution.

(2) The sub judice Order of the Minister is a regulatory act creating legal rules of a general application. This is so because the legal content of the Order is not exhausted by one and only application, but it retains its force to provoke new applications on the undefined and future situations which have the general prerequisites set out by the act. It follows that the sub judice Order cannot be directly challenged by a recourse under Article 146.1 of the Constitution.

*These Regulations were published in Supplement III (1) of the Official Gazette of 12.3.1976. Their contents in so far as relevant to this recourse appear at p. 2511 post.

3 C.L.R. **Contractors of Electr. Engineers v. Republic**

5 (3) The sub judice Regulations and Order relate exclusively to the qualifications and the conditions required for the exercise of the profession relating to electrical installations. Such conditions and qualifications are absolutely necessary in the interests of public safety, for the protection of the rights of others and in the public interest. It follows that the contention that the sub judice Regulations and Order are repugnant to Article 25 of the Constitution fails.

10 (4) Having regard to the true construction of the enabling enactment (Section 10 of Cap. 170) it cannot be held that the sub judice Regulations are ultra vires such enactment. Moreover, in the light of the principles of the decision in the *Board of Registration of Architects v. Kyriakides* (1966) 3 C.L.R. 640 at 662-663 the applicants were not deprived of any vested right.

Recourse dismissed.

No order as to costs.

Cases referred to:

- 20 *Demetriades and Son v. Republic* (1969) 3 C.L.R. 557;
Papaphilippou v. Republic, 1 R.S.C.C. 62;
PASYDY v. Republic (1978) 3 C.L.R. 27;
Eagle Automotic v. Republic —decided on 9.2.1962 by the Supreme Constitutional Court unreported;
- 25 *Lanitis Farm Ltd. v. Republic* (1982) 3 C.L.R. 124;
Nicosia Race Club v. Republic (1984) 3 C.L.R. 791;
Police v. Hondrou, 3 R.S.C.C. 82;
Board of Registration of Architects & Civil Engineers v. Kyriakides (1966) 3 C.L.R. 640;
Apostolou v. The Republic (1984) 3 C.L.R. 509.

Recourse.

- 30 Recourse for a declaration of the Court that the order made by respondent 2 under regulation 53 of the Electricity Regulations as well as the Electricity (Amendment) Re-

gulations, 1976 are null and void and of no legal effect whatsoever.

N. Papaefstathiou, for the applicants.

N. Charalambous, Senior Counsel of the Republic,
for the respondents. 5

K. Talarides, for the interested parties.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The applicants in this recourse pray for:

“A declaration of the Court that the Order made 10
by respondent 2 under Regulation 53 of the Electricity
Regulations, published in Supplement No. III(I)
of the Official Gazette of the 2nd April 1976, under
Not. No. 1266 as well as the Electricity (Amendment)
Regulations of 1976 published in Supplement No. III 15
(I) of the Official Gazette of the 12th March, 1976,
under Not. No. 1262, are null and void and of no
legal effect whatsoever generally or in the alternative
to the extent they affect the electrical installations con-
tractors who were registered prior to their coming in- 20
to operation.”

The recourse was founded on the following grounds of
Law:-

- (a) The sub judice order and the Regulations and speci- 25
fically regulations 5 and 53 offend the vested rights
of the Electrical Installations Contractors who were
registered prior to their coming into operation be-
cause they restrict the nature and extent of the works
they were performing by virtue of the pre-existing Re-
gulations. 30
- (b) The sub judice order and Regulations were made in
excess and/or abuse of powers for the reasons in pa-
ragraph (a) hereinabove mentioned and because they
were ultra vires section 10 of the Electricity law,
Cap. 170 and further they are extremely and unrea- 35
sonably restrictive of the rights of the Electrical In-

stallations Contractors to carry out their trade, in contravention of Article 25 of the Constitution.

The opposition was based on the following grounds:

- 5 (a) To the extent that the recourse challenges the Electricity (Amendment) Regulations 1976 it cannot be entertained because the said Regulations do not amount to an executory administrative act within the meaning of Article 146 of the Constitution.
- 10 (b) To the extent that the recourse challenges the order of the Minister of Communications and Works it cannot be entertained because it does not affect any legitimate interest of the applicants.
- 15 (c) The sub judice Regulations were lawfully made and within the framework of the powers vested in the Council of Ministers by virtue of section 10 of the Electricity law, and the sub judice Order was lawfully made by virtue of Regulation 53 of the Electricity Regulations 1941 to 1976.
- 20 (d) Both the sub judice Regulations and the sub judice Order do not infringe any vested right of the applicants because the latter have never had a right of drawing plans.

The recourse was filed on 29th May 1976, and came up for directions on 16th September 1976, when it was fixed for hearing on 13th December 1976. On this latter date it was adjourned for mention on the 17th February 1977 on the application of applicants' counsel because, as he said, "there may be developments which will render, probably, unnecessary the hearing of this case." For this same reason and at the instance of counsel for the applicants it was fixed for mention on 21st April 1977 and 6th October 1977. On that date counsel for the applicants stated "that the Minister of Communications and Works has appointed a Committee to examine the possibility of amending the terms of this Order which is the subject-matter of this recourse" and requested that the case be adjourned sine die pending the outcome of this examination; and the Court

acceded to that request. As no steps had been taken by either side the Court on the 14th March 1978, acting ex proprio motu, fixed the case for directions on the 13th April 1978. On this date directions for filing written addresses were made and the case was fixed for clarifications on 15th June 1978. Though the written address on behalf of the applicants had to be filed within three weeks from the 13th April 1978, it had not been filed by the 23rd March, 1979, in spite of the fact that repeated extensions of time were granted to him for that purpose. It was finally filed on the 22nd November 1985; and the written address of the respondent on the 13th September 1986. In the meantime on the 14th June, 1985 leave was granted to the Association of Licensed Electrical Contractors (POVEK) to take part in the proceedings as an interested party and the address of the latter was filed on the 12th November 1986. The case was fixed for oral clarifications and evidence on the 24th November 1986; and my judgment has been reserved since then.

Learned counsel for the respondents in his written address raised the following preliminary points:

- (a) That the sub judge Regulations are an act of a legislative content and cannot be directly attacked by a recourse.
- (b) That the sub judge Order is a regulatory act of a legislative content and cannot be attacked by a recourse.
- (c) That the applicants are not vested with a legitimate interest because the sub judge acts have not caused any detriment to the applicants.

Before dealing with the issues that arise for consideration I will deal shortly with the sub judge Regulations and the sub judge Order.

The sub judge Regulations were made by the Council of Ministers in the exercise of its powers under section 10 of the Electricity Law, Cap. 170 and Article 188.3 (b) of the Constitution.

The main provisions of these Regulations are:

(a) That prior to the execution of any electrical installation electrological plans and studies should be submitted to the appropriate authority for the approval of the architectural plans with a copy thereof to the
5 Electricity Authority of Cyprus.

(b) All electrical installation works should be executed by registered persons according to the provision of these Regulations. Further by Regulation 53 there are set out the qualifications required for the acquisition of a
10 certificate of eligibility of Electrical Engineer 1st Grade, 2nd Grade, 3rd Grade; and there are, also, set out the electrical works which each one of them can undertake.

Also provision is made in Regulation 53 (3) (b) and
15 5 (b) enabling the Minister of Communications and Works to issue Orders prescribing the limits within which certain classes of Electrical Engineers can draw plans and prepare studies. The Minister acting under this Regulation—53—made the sub judge order
20 prescribing the limits for the drawing of plans and studies by (a) Electrical Engineer, third grade, Senior Electricity Technician, and Electrical Apparatus Technician.

I will now deal with the preliminary issues.

25 *Preliminary issue:* (a)—Whether the sub judge Regulations are of a legislative nature:

In *Demetriades and Son v. Republic* (1969) 3 C.L.R. 557 (F.B.) the Supreme Court adopted the following test for ascertaining the nature of an act which was formulated
30 by the Supreme Constitutional Court in the case of *Papaphilippou v. Republic* 1 R.S.C.C. 62 at p. 64:

“The decisive test for ascertaining the legal nature of any act or omission is not necessarily the terminology employed in describing it but its essential nature.”

35 Reading now the Regulations in question we come to one conclusion only: That their essential nature is to regu-

late legislatively the matters referred to therein. Therefore they are a piece of legislation.

Now since the said Regulations are of a legislative nature they do not come within the ambit of Article 146.1 of the Constitution and they cannot be made the subject of a recourse (see *Eagle Automatic v. Republic*—decided in February 9, 1962 by the Former Supreme Constitutional Court (unreported) *Papaphilippou* (supra) *Demetriades* (supra) and *PASYDY v. Republic* (1978) 3 C.L.R. 27. In view of this conclusion preliminary point (a) succeeds. 5 10

Preliminary point (b)—Whether the sub judice Order is a Regulatory Act. In *Lanitis Farm Ltd., v. Republic* (1982) 3 C.L.R. 124 in which the applicants who were producers of table grapes challenge an order, made by the Council of Ministers under section 16 of the Agriculture Insurance Law, 1977, whereby table grapes were prescribed as compulsorily insured, I held at pp. 130-132, after referring to a passage from Stassinopoulos, the Law of Administrative Act (1951) p. 105 which I need not reproduce here. that: 15

“In Cyprus, the applicability of Article 146.1 has as a rule been decided mainly on the basis of the essential nature of the decision, act or omission being challenged. The nature of the organ, authority or person from which a decision or act emanated, or which was allegedly guilty of an omission, has been treated as a relevant, but not always necessarily decisive, consideration in determining the essential nature of such decision, act or omission (see the case of *A. Kourris and The Supreme Council of Judicature* (1972) 3 C.L.R. p. 390, at p. 400 et seq. and the authorities therein cited). 20 25 30

Consequently regulatory acts of a legislative content whether issued by the Council of Ministers or other administrative organ cannot be directly challenged before the Supreme Court as not satisfying the prerequisites of Article 146 of the Constitution and this is the position regarding the order challenged by these two recourses. Support for this approach can also be derived from what was decided in the cases, inter alia, 35

of *Police and Hondrou*, 3 R.S.C.C. 82; *Sophoclis Demetriades & Son and Another v. The Republic* (1969) 3 C.L.R. p. 557; and *Demetrios Philippou & Others v. The Republic* (1970) 3 C.L.R., 129; hence both
5 fail and they should be dismissed accordingly.”

The *Lanitis Farm* was followed in the *Nicosia Race Club v. Republic* (1984) 3 C.L.R. 791. In this latter case The Villages (Administration and Improvement) (Amending No. 3) Regulations of Ayios Dhometios, made
10 under s. 24(h)(i) of the Villages (Administration and Improvement) Law, Cap. 243 obliged the applicants to collect from each player and pay to the respondents a tax of 0.75% on the value of each sweepstake or bet placed. After setting out the above passage from the *Lanitis Farm*
15 case, I said at pp. 797 - 798:

“... regulatory acts of a legislative content whether issued by the Council of Ministers or other administrative organ cannot be directly challenged before the Supreme Court as not satisfying the prerequisites of Article 146 of the Constitution and this is
20 the position regarding the order challenged by these two recourses. Support for this approach can also be derived from what was decided in the cases, inter alia, of *Police and Hondrou*, 3 R.S.C.C. 82; *Sophoclis Demetriades & Son and Another v. The Republic* (1969) 3 C.L.R. p. 557; and *Demetrios Philippou & Others v. The Republic* (1970) 3
25 C.L.R. 129’.

That there is at present only one racecourse and consequently that the sub judice regulations apply to this only does not divest the regulations of their general applicability or prevent their application to ‘future situations’ because if a new Horseracing Authority or new racecourse are set up in future the regulations will equally be applicable to them.
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35

By the present recourse the applicant Club directly challenges the regulations themselves—and not their application—which as explained above cannot be, and for this reason this recourse should fail.”

In the *Lanitis Farm* case the sub judice act affected producers of table wines only; and in the *Nicosia Race Club* case it affected the Nicosia race club. And yet the sub judice Regulations in both cases were held to be Regulatory acts outside the ambit of Article 146.1 of the Constitution. 5
Similarly in this case the sub judice order is a regulatory act creating legal rules of a general application. This is so because the legal content of the Order is not "exhausted by one and only application but it retains its force to provoke new applications: on the undefined and future situations which have the general prerequisites set out by the act". 10

In view of this conclusion I hold that the sub judice Order, too, being a regulatory act of a legislative content, cannot be directly challenged before the Supreme Court as not satisfying the prerequisites of Article 146 of the Constitution (see *Lanitis Farm* (supra), *Nicosia Race Club* (supra), *Hondrou*, 3 R.S.C.C. 82; *Demetriades* (supra), *Papa-philippou* (supra). 15

Though by my above conclusions on preliminary issues (a) and (b) the recourse is disposed I will proceed to deal with the merits of the recourse as well should the case go higher and I am reversed on the above issues so as the Appeal Court may have my conclusion on all aspects of the recourse. 20 25

Merits of the recourse

The sub judice Order and Regulations are attacked on the ground of violating applicants' rights under Article 25 of the Constitution. Now under Article 25.1 "every person has the right to practise any profession or to carry on any occupation, trade or business", and under Article 25.2 the exercise of this right may be subject to such restrictions as are prescribed by Law and relate exclusively to the qualifications usually required for the exercise in the interests of the security of the Republic or the Public safety". 30 35

In *Board of Registration of Architects v. Kyriakides* (1966) 3 C.L.R. 640 in which the provisions of the Architects and Civil Engineers Law, 1962, prescribing the qualifications for registration as an architect or civil en-

gineer, were attacked as infringing Article 25 of the Constitution, it was held that the "conditions or restrictions laid down in section 7 relate exclusively to qualifications usually required for the exercise of the profession of an architect";
5 and that they were "necessary in the interests of public safety, for the protection of the rights of others, and in the public interest", and were not unconstitutional. (See pp. 658 - 665 of the Report which are very relevant.)

10 In *Nicosia Race Club v. Republic* (1984) 3 C.L.R. 799 at p. 811 I also adopted the following passage from *Apostolou v. Republic* (1984) 3 C.L.R. 509, where it was said:

"It is a well settled principle that Article 25 of the Constitution protects the right to exercise a profession or to carry on any occupation, trade or business. from
15 direct and not indirect restrictions or interference. Ample authority can be found inter alia in the following cases, *The Police and Liveras*, 3 R.S.C.C. pp. 65-67; *Pсарas v. The Republic* (1968) 3 C.L.R. 363, 364; *Antoniades and others v. The Republic* (1979) 3
20 C.L.R. 641, 659; *Ioannis Voyias v. The Republic* (1974) 3 C.L.R. p. 390, 413; *Impalex Agencies Ltd. v. The Republic* (1970) 3 C.L.R. 361; and *Antoniades* case (*supra*) at p. 655."

Having regard to the contents of the sub judge Order
25 and Regulations I hold that they relate exclusively to the qualifications and the conditions required for the exercise of the profession relating to electrical installations; and they are absolutely necessary in the interests of public safety, for the protection of the rights of others, and in the public
30 interest.

After all one should not ignore the dangers inherent from the use of electricity without any control and the execution of electrical installations by unqualified people.

35 In view of the above conclusion the sub judge Regulations and Order do not contravene Article 25 of the Constitution.

The regulations in question were attacked, also, as being ultra vires to the enabling enactment, namely section 10 of the Electricity Law, Cap. 170.

In *Nicosia Race Club v. The Republic* (1984) 3 C.L.R. 799, I dealt with this question at pp. 809 - 810, where I referred to the relevant Case Law that I need not reproduce it here.

Reading now the enabling enactment and having regard to the true construction of Section 10(a), (e), (f), (g) and (j), I hold that the sub judice Regulations are within the framework as laid down by the enabling law and therefore they are not ultra vires the enabling enactment. 5

Regarding ground (a) of the grounds of Law, namely deprivation of vested rights very relevant is what is stated at pp. 662 - 663 in the *Kvriakides* case (supra). 10

"We have to consider also whether a person who had practised as an architect before the Law has acquired a vested right to continue practising such profession, that is, whether such right is protected either by Article 25 or Article 28 of our Constitution; and whether the denial to a person (the applicant) of the right to practise his profession without the licence required, constitutes a deprivation of such vested right. In deciding this point we have derived considerable help from the Judgment of the Supreme Court of the United States in the case of *Dent v. State of West Virginia*, 129 U.S. 114 (1889); 32 Law. ed. 623." 15 20

Adopting the principles above stated, I hold that applicants have not been deprived of any vested right. 25

In view of my above conclusion the recourse must fail. In the circumstances however, there will be no order as to costs.

Recourse dismissed. 30
No order as to costs.