

1987 November 13

[LORIS. J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS SOLOMONIDES,

Applicant,

v..

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(Case No. 461/85).

Constitutional Law — Equality — Constitution, Art. 28 — Does not exclude reasonable distinctions, but only arbitrary and totally unjustifiable differentiations — Public Corporations — Appointments — Prerequisite that candidates should be less than 30 years of age — Whether contrary to Art 28 — Question answered in the negative.

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Constitutional Law — Right to exercise a profession — Constitution, Art. 25 — Public Corporations — Appointments — Prerequisite that candidates should be less than 30 years of age — Art 25 not relevant.

Public Corporations — The Public Organisations Law 61/70 — Appointments — They are not regulated by the Public Service Law 33/67, but by Law 61/70 and the Regulations made thereunder.

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Public Officers — Appointments — The Public Service Law 33/67, section 33(b) — Ambit of.

The question in this case is whether the prerequisite set out in the relevant advertisement for the sub judge post, namely that the candidates should be less than 30 years of age as on 31.12.84 is illegal or contrary to Articles 25 or 28 of the Constitution.

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It must be noted that in respect of the issue of illegality, counsel for applicant invoked section 33(b) of Law 33/67, which provides that no person shall be appointed to the Public Service unless «he has attained the age of seventeen years».

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Held, *dismissing the recourse*: (1) The respondent is an «Organisation» in the sense of Law 61/70. Appointments to the respondent Authority are not regulated by the Public Service Law, but by the Respondent itself pursuant to

section 3 of Law 61/70 and the Regulations made under such law Assuming that section 33(b) of Law 33/67 is applicable, the said prerequisite as to age is not contrary to its provisions

(2) Art 25 of the Constitution has nothing to do with this case

5 (3) Art 28 of the Constitution does not exclude reasonable distinctions, which have to be made in view of the intrinsic nature of things, but only differentiations, which are arbitrary and totally unjustifiable The principle of equality entails the equal or similar treatment of all those who are found to be in the same situation

10 In this case the applicant has failed to establish that the prerequisite in question «does not rest upon a reasonable basis but it is essentially arbitrary»

Recourse dismissed
Costs against applicant

Cases referred to

15 *Loizides v Mayor of Nicosia*, 1 R S C C 59
The Improvement Board of Eylenja v Constantnou (1967) 1 C L R 167,
Republic v Nishan Arakian and Others (1972) 3 C L R 294
Hjiloannou v The Republic (1983) 3 C L R 1041

Recourse.

20 Recourse against the decision of the respondent whereby applicant's name was not included in the list of candidates for the posts of Computer's Programmer/Analyst and Economist with specialization in Statistics and Marketing as he did not cover the required qualifications and/or prerequisites set out in the
25 announcement of the respondent authority

C. *Loizou*, for the applicant.

A. *Hadjioannou*, for the respondent.

Cur. adv. vult.

30 LORIS J. read the following judgment. The respondent Authority, published on 11.11.84 an announcement in the daily press, inviting applications for the filling of vacant posts of Head of Service «B» - Financial Personnel: (a) Computer's Programmer/Analyst (b) Economist with specialization in Statistics and Marketing.

In the aforesaid announcement apart from the required qualifications of the candidates certain other prerequisites were set out, amongst which one referring to the age of the candidates, which according to the announcement should be «less than 30 years on 31.12.84.»

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The applicant in the present recourse, who was born on the 6th April 1954, submitted on 24.11.84 an application for appointment in one of the vacant posts in question, in response to the said announcement of the respondent Authority.

The respondent Authority addressed to the applicant a letter dated 9.2.85 (vide Appendix «A» attached to the recourse) whereby he was informed that his name could not be included in the list of candidates as he did not cover the required qualifications and/or prerequisites set out in the said announcement of the Authority.

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Applicant impugnes by means of the present recourse the decision of the respondent Authority set out in its letter of 9.2.85 addressed to the applicant, whereby latter's candidature in one of the said vacant posts of the Authority was excluded obviously on the ground of age, as applicant would have been over 30 years of age by the 31.12.84, having been born on 6.4.54, whilst the announcement of the Authority in the daily press required the candidates to be less than thirty years on 31.12.84.»

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The sub-judice decision is being attacked as violating Articles 25 and 28 of our Constitution.

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It must be stated at the outset that the complaints for alleged unconstitutionality were not referred with sufficient clarity and in quite unequivocal terms, as they should be. (*Loizides v. Mayor of Nicosia*, 1 R.S.C.C. 59 — *The Improvement Board of Eylenja v. Constantinou* (1967) 1 C.L.R. 167).

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In the first place I cannot see how the sub-judice decision offends Article 25 of the Constitution. It is true that relevant argument in this connection, in applicant's written address, was in a way modified and express reference was made to s. 33(b) of the Public Service Law of 1967, (Law No. 33/67), as amended.

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It is the allegation of the applicant that the only limit in respect of age that can be imposed on applicants for appointment to the Public Service is the one envisaged by s. 33(b) of Law 33/67, which provides that no person shall be appointed to the Public
5 Service unless «he has attained the age of seventeen years.»

With respect I am unable to agree with this submission: The respondent is the Cyprus Telecommunications Authority, an «organisation» within the definition of section 2 of Law 61/70. Appointments, promotions e.t.c. to the Respondent Authority are
10 regulated by the Respondent itself pursuant to sec. 3 of Law 61/70; and Regulations made under this law (Personnel of Cyprus Telecommunications Authority, General Regulations 1982 - published in the Official Gazette of the Republic under No. 1792
15 of 26.7.1982 Suppl. No 3 Not. 220) contain provisions as to the age of new appointees with the Authority, entirely different from the provisions set out in s. 33(b) of Law 33/67 (vide Regulation 7 and in particular Regulation 7(1)(f) of the aforesaid Regulation of 1982)

But even if we consider that s. 33(b) of Law 33/67 was
20 applicable in the case under consideration, would that make any difference to the case of the applicant? I would answer this question unhesitatingly in the negative. In virtue of s. 33(b) of Law 33/67 the minimum age of a prospective appointee is the 17th year. The announcement of the Respondent Authority requires
25 the prospective appointees in the vacant posts in question to be «less than 30 years on 31.12.84».

Let us now turn to Article 28 of the Constitution. The complaint of the applicant is that the sub-judice decision discriminates
30 between citizens of the Republic over 30 years with those under 30 years. With respect the comparison attempted is too wide and its vagueness hinders any comparison. In the case of the *Republic v. Nishan Arakian and Others* (1972) 3 C.L.R. 294, the Full Bench of this Court held *inter alia* that (a) para 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards
35 only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things.

(b) the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation.

(c) Article 28.1 of our Constitution excludes only the making of differentiations which are arbitrary and totally unjustifiable.

In the case of *Hjloannou v. Republic* (1983) 3 C.L.R. 1041, the Full Bench of this Court dealing with the provisions of a scheme of service in the Welfare Department and confronted with a submission to the effect that the provision in the scheme of service that a candidate for first entry should not be less than 21 and not more than 45 years of age is unconstitutional as being contrary to the principle of equality in Article 28 of the Constitution, as this age-limit is not applicable to the candidates in the service who are eligible for promotion, held that

«A classification that has reasonable basis does not offend against the principle of equality because in practice it results in some inequality. One who asserts the classification as unjustified must carry the burden of showing that it does not rest upon a reasonable basis but it is essentially arbitrary.»

And in the case under consideration the applicant has failed to establish that the prerequisite in the publication of the respondent Authority, to the effect that the prospective appointee should be less than 30 years on 31.12.84, «does not rest upon a reasonable basis but it is essentially arbitrary.»

For all the above reasons present recourse is doomed to failure and it is hereby dismissed.

Applicant to pay the costs of the respondent as same will be assessed by the Registrar.

Recourse dismissed with costs against applicant.