

1988 June 28

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SYNDESMOS ADIOUCHON ERGOLAVON ELECTROLOGON (POVÉK)  
AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF THE DEPARTMENT OF ELECTRICAL AND ME-  
CHANICAL SERVICES, AS THE LICENSING AUTHORITY UNDER  
THE ELECTRICITY REGULATIONS,

Respondents.

(Case No. 353/86).

5 *The Electricity Regulations, Regs. 53(6) (b), 53(7) (a) (b), 53(9) (a) (b) and*  
*53 (11)—Certificates of competency as maintenance-man of electrical ap-*  
*pliances First or Second Grade—Regulatory Administrative Act 333/83 is-*  
*sued by the Minister of Communications and Works under Reg. 53(6) (7)*  
*and (9) (b)—Such act set out the maximum limits in respect of preparing*  
*plans and studies for the operation (maintenance) and installation of electri-*  
*cal appliances and equipment—Licensing Authority not bound to grant the*  
*maximum units—The purpose of the Minister's Order was to ensure that in*  
*the exercise of its discretion the Authority will not exceed such maximum*  
10 *units—The extent of the actual restriction to be imposed on the persons*  
*concerned depends on their performance at examinations—The aforesaid*  
*Regulations are not ultra vires the Electricity Law, Cap. 170, section 10(e)*  
*(f) (g) and (h).*

15 *Constitutional Law—Right to exercise a profession, trade or calling—*  
*Constitution, Art. 25—Restriction of—The Electricity Regulations, Regs.*  
*53(6) (a) (b), 53(7) (a) (b), 53(9) (a) (b) and 53(11)—Impose restrictions*  
*necessary in the interests of public safety, for the protection of the rights of*  
*others and in the public interest—Therefore, they are not repugnant to Art.*  
*25.*

The facts of this case appear sufficiently in the judgment of the Court.

*Recourse dismissed.*

*No order as to costs.*

*Cases referred to:*

*The Board for Registration of Architects and Civil Engineers v. Kyriakides* 5  
(1966) 3 C.L.R. 640;

*Apostolou v. The Republic* (1984) 3 C.L.R. 509;

*Police v. Hondrou*, 3 R.S.C.C.82.

**Recourse.**

Recourse against the refusal of the respondents to grant to applicants No. 2 a Certificate of Competency as maintenance-man of electrical appliances. 10

*K. Talarides*, for the applicants.

*M. Tsiappa (Mrs.)*, for the respondents.

*Cur. adv. vult.* 15

A. LOIZOU P. read the following judgment. Applicant 1, is the Association of the Licensed Electrical Contractors and it is a professional Association. The applicants who are listed in the Schedule attached to the recourse (hereinafter to be referred to as applicants 2), are members of applicant 1. The object of the latter is the protection and promotion of the professional interests of its members. Applicants 2 are duly registered as Electrical Contractors and/or as Maintenance-men for electrical appliances, First Grade and/or Maintenance-men for electrical appliances, Second Grade. 20  
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By means of letters of their advocate dated 23rd December

1985, (Exhibits 2, 3 and 4, which was addressed to the respondent Licensing Authority, by virtue of the Electricity Regulations, the applicants sought to be furnished with Competency Certificates and Registration Certificates in accordance with the Order of the Minister of Communications and Works, dated 16th December 1983 (Regulatory Administrative Act 333/83). By means of a further letter dated 22nd January 1988 (Exhibit 5) addressed to the respondent Licensing Authority, applicants 2 sought to be furnished with Competency Certificates and Registration Certificates as Electrical Contractors of Electrical and Mechanical Installations in accordance with the said Order 333/83.

By means of a letter dated 15th March, 1986, (see Exhibit 1, attached to the recourse) the Director of the Department of Electrical and Mechanical Services of the Ministry of Communications and Works, rejected all the above claims of applicants 2. The said letter, so far relevant reads:

"Under Regulations 53(9) (a), 53(6) (a) and 53(7) (a) for one to acquire a Certificate of Competency as maintenance-man of electrical appliances he has to succeed in the corresponding examinations which are carried out by the Department. The limits of the competency of each one of the candidates are specified by the Licensing Authority on the basis of his performance at these examinations, in exercise of the discretionary power vested in the Authority by virtue of Regulation 53(11) Having in mind the above, I regret to inform you that the issue without an examination of Certificates of Competence as contractors or maintenance-men to the persons named in your said letters is not possible."

As against the decision embodied in the above letter the applicants filed the present recourse praying for a declaration that it is null and void and of no legal effect whatsoever.

The grounds of law relied upon in support of the recourse are the following:

(1) That the sub judge decision was taken by a non-competent organ.

(2) That the sub judge decision was the result of a defective procedure.

(3) That the sub judge decision was taken in a manner contrary to law and on the basis of unascertained facts and/or is the product of insufficient inquiry. 5

(4) That the sub judge decision was taken in a manner contrary to the Electricity Regulations (1941 - 1976) and/or Order 333/83. 10

(5) That the sub judge decision was taken in excess and/or abuse of powers.

Before dealing any further with the submissions of learned counsel for the applicants it is deemed proper to quote hereunder Regulations 53(6) (a) (b), 53(7) (a) (b), and 53(11), of the Electricity Regulations 1976. So far as relevant they provide as follows: 15

"53 (6) (a) Πρόσωπον τι δύναται να αποκτήση Πιστοποιητικόν ικανότητας Συντηρητού Ηλεκτροσυσκευών (Πρώτης Τάξεως) εάν 20

.....  
(iii) ικανοποίηση την Αρχήν Αδειών κατόπιν εξετάσεων, περί την ικανότητα και τεχνικάς γνώσεις αυτού.

(β) Εγγεγραμμένος Συντηρητής Ηλεκτροσυσκευών (Πρώτης Τάξεως) δύναται να αναλαμβάνη την ευθύνη της λειτουργίας συσκευών και εξοπλισμού χαμηλής και μέσης τάσεως εντός των υπό του Υπουργού Συγκοινωνιών και Έργων καθορισθησομένων δια διατάγματος ορίων. 25

(7) (α) Πρόσωπον τι δύναται να αποκτήσει πιστοποιητικό ικανότητας Συντηρητή Ηλεκτροσυσκευών (Δευτέρας Τάξεως) εάν:

5

και

(ii) ικανοποιήση την Αρχήν Αδειών, κατόπιν εξετάσεων, περί την ικανότητα και τεχνικάς γνώσεις αυτού.

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(β) Εγγεγραμμένος Συντηρητής Ηλεκτροσυσκευών (Δευτέρας Τάξεως) δύναται να αναλαμβάνη την ευθύνη της λειτουργίας συσκευών και εξοπλισμού χαμηλής και μέσης τάσεως εντός των υπό του Υπουργού Συγκοινωνιών και Έργων καθορισθησομένων δια διατάγματος ορίων.

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(9) (α) Πρόσωπον τι δύναται να αποκτήσει πιστοποιητικό ικανότητας Εργολήπτου Ηλεκτρικών Εγκαταστάσεων εάν είναι εικοσιμηνός τουλάχιστον ετών,

και

(1) (i) .....

20

(2) δια των επί τούτω διενεργουμένων εξετάσεων ικανοποιήση την Αρχήν Αδειών περί την ικανότητα και τας τεχνικάς γνώσεις αυτού.

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(β) Εγγεγραμμένος Εργολήπτης Ηλεκτρικών Εγκαταστάσεων δύναται να αναλαμβάνη την ευθύνη εποπτείας εκτέλεσεως εγκαταστάσεως ηλεκτρικών συσκευών και εξοπλισμού χαμηλής και μέσης τάσεως εντός των υπό του Υπουργού Συγκοινωνιών και Έργων καθορισθησομένων δια διατάγματος ορίων:

.....  
(11) Η Αρχή Αδειών κέκτηται διακριτικήν εξουσίαν όπως περιορίζει τα παρεχόμενα πιστοποιητικά ικανότητας, εις ειδικόν τινα τύπον, μέγεθος και τρόπον εγκαταστάσεως συρμάτων, συσκευής και εξοπλισμού.

5

Ο κάτοχος όμως ούτω περιορισθέντος πιστοποιητικού δύναται μετά πάροδον δώδεκα μηνών από της εκδόσεως αυτού να ζητήσει όπως εξετασθή δια την άρσιν των τοιούτων περιορισμών."

"53 (6) (a) A person may obtain a certificate of competency as maintenance - man of Electrical Appliances (First Grade) if-

10

(i) .....

(ii) .....

(iii) satisfies the Licensing Authority through examinations about his competency and technical knowledge.

15

(b) A registered Maintenance - man of Electrical appliances (First Grade) may undertake the responsibility for the operation of appliances and equipment of low and medium pressure within the limits specified by an Order of the Minister of Communications and Works.

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53 (7) (a) A person may obtain a certificate of competency as Maintenance - man of Electrical appliances (Second Grade) if:

(1) (i) .....

(ii) .....

25

(2) (i) ..... and

.....  
(ii) satisfies the Licensing Authority, through examinations about his competence and technical knowledge.

5 (b) A registered Maintenance-man of Electrical appliances (Second Grade), may undertake the responsibility of the operation of appliances and equipment of low and medium pressure within the limits specified by an Order of the Minister of Communications and Works.

10 53 (9) (a) A person may obtain a certificate of competency as Electrical Contractor if he is at least twenty - one years of age and,

(1) (i) .....

(ii) .....

15 (iii) ..... and

(2) through the examinations carried out for the purpose satisfies the Licensing Authority about his competency and his technical knowledge.

20 (b) A registered Electrical Contractor may undertake the responsibility of supervision of the execution of the installation of electrical appliances and equipment of low and medium pressure within the limits specified by an Order of the Minister of Communications and Works:

25 53 (11) The Licensing Authority is vested with discretionary power to impose restrictions in the certificates of competency in so far as the size and the manner of installation of wires, the appliances and equipment are concerned.

The holder of certificate which has thus been restricted may within twelve months of its issue apply to be examined for the purpose of removing the restrictions."

By means of Regulatory Administrative Act 333/83, the Minister of Communications and Works acting under the aforementioned paragraph (b) of Regulations 53(6), (7) and (9) specified as follows: the limits in respect of the responsibility for preparing plans and studies for the operation (maintenance) and installation of electrical appliances and equipment. 5

"In respect of maintenance - men (low and medium pressure): 10

(a) First Grade 350 KVA (up to)

(b) Second Grade 75 KVA (up to)

In respect of Electrical Contractor:

(a) For installation (contracting) 100 KVA (up to) 15

(b) Preparing plans and studies (restricted licence): 25 KVA (up to)."

Learned counsel for the applicants elaborating on his above grounds of law submitted the following in his written address:

(1) Under the aforementioned Regulations the competent authority to specify the limits within which the above classes of electricians, can undertake responsibility, is the Minister of Communications and Works, who by means of Order 333/83 has specified the corresponding limits. The Director of E.M.S. relying on Regulation 53 (11) restricts to a greater extent the said limits in the case of each one of the applicants. Such a course - the submission goes on,- runs contrary to the said Regulations. Further the Licensing Authority has no authority, by virtue of Regulation 53 (11) to reduce the limits specified by the Minister in respect of 20 25

each professional category. And therefore the decision was taken by a noncompetent Authority.

(2) That the said Regulations and Order are ultra vires the enabling enactment namely The Electricity Law, Cap. 170.

5      (3) That the said Regulations constitute a restriction to the right of the exercise of the profession of applicants and such restrictions which have not been placed by an enactment but by means of Regulations are not necessary for any of the purposes of Article 25 (2) of the Constitution.

10      *Dealing first with submission (1), I have these to say:*

- It is clear from the wording of the aforementioned Regulation 53 (11) that the Licensing Authority is vested with discretionary power to impose restrictions on the certificates of competence. And it is also, clear that the extent of such restrictions depends on the performance of the candidates in the examinations. Indeed in the certificates of competency of all the applicants restrictions as envisaged by means of Regulation 53 (11) have been imposed. Having regard to the wording of the aforementioned Regulations 53 (6) (a) (b), 7 (a) (b), 9(a) (b), and 53(11) I am of the opinion that  
15      Order 333/83 does not entitle the applicants as of right to the maximum units specified therein. The aim of the said Order is only to ensure that the Licensing Authority in the exercise of its discretion under Regulation 53(11) does not exceed the maximum limits specified in the Order in relation to each different class of electricians. Had it been otherwise an order of the Minister under sub-  
20      paragraph (b) of Regulation 53(6) (7) and (9), would have rendered meaningless the discretionary power of the Licensing Authority to impose restrictions under Regulation 53(11).  
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30      For all the above reasons I hold the view that in addition to the qualifications named in the Regulations the other sole criterion which governs the grant of certificates of competency and the extent of the restrictions imposed therein is the performance of the candidates in the examinations. I, also, hold that the competent

authority for the granting of the said certificates and the imposition of the restrictions is the Licensing Authority which is not at all bound to grant a certificate of competency with the maximum limits specified in the order of the Minister.

For all above reasons contention (1) must fail. 5

Coming now to the contention about ultra vires, I must say that the Regulations in question come clearly within section 10 (e) (f) (g) and (h) of the Electricity Law, Cap. 170. Therefore contention (2) must fail.

Coming finally to the contention about the infringement of Article 25 of the Constitution in the case of *The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640 (F.B.) which dealt with the qualifications for the registration of architects and civil engineers the following were said at pp. 658 - 659: 10  
15

"The question which falls for determination is, do the conditions or restrictions prescribed by section 7 conflict with the provisions of Article 25(2) of the Constitution? Having regard to what has been stated above, with regard to qualifications usually required we are satisfied 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; and we are also satisfied that they are necessary in the interests of public safety, for the protection of the rights of others and in the public interest. We, therefore, hold that the provisions of section 7 are not unconstitutional." 20  
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Also in *Apostolou v. The Republic* (1984) 3 C.L.R. 509 (F.B.), I had these to say at p. 524:

"It has been urged that the burden imposed on the self - employed by the Law and the Regulations by the payment of the contributions set out therein is such that it reaches the limits of a prohibition or a restriction impermissible and contrary to Ar- 30

5 article 25 of the Constitution. 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 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; *Psaras v. The Republic*, (1968) 3 C.L.R. 363, 364; *Antoniades and Others v. The Republic* (1979) 3 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.

15 Without accepting that the said impositions are of a nature that could be considered as restrictive to or prohibitive of the exercise of the applicants profession or trade, yet I have no difficulty in arriving at the conclusion, in the light of the aforementioned authorities that this ground should also fail."

20 In view of the above case - law I hold that the restrictions which have been imposed by means of the aforesaid Regulations are necessary in the interest of public safety, for the protection of the rights of others and in the public interest. They therefore do not violate Article 25(2) of the Constitution. I must say further that the fact that the restrictions to the right safeguarded by Article 25 of the Constitution have been imposed by means of subsidiary legislation and not by means of legislation of the House of Representatives, does not make any difference. (See *Police v. Hondrou*, 3 R.S.C.C. 82.)

25 For all the above reasons the recourse must fail and is hereby dismissed with no order as to costs.

30 *Recourse dismissed.*

*No order as to costs.*