

1988 July 15

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS POLYCARPOU AND ANOTHER,

*Applicants,*

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

*Respondent.*

(Consolidated Cases Nos. 502/87, and 584/87),

*Public Corporations—Cyprus Telecommunications Authority—Appointments/Promotions—Of subordinate personnel—The Cyprus Telecommunications Authority General Regulations 1982, Regs. 10(5) and 24—Ultra vires the enabling law i.e. Cap. 302.*

5 *Subsidiary legislation—Should be confined within the four corners of the enabling statute—Raison d'etre of the rule.*

10 The question in this case is whether Regs. 10(5) and 24 of the Cyprus Telecommunications Authority General Regulations 1982 (220/82) which provide for the appointment of subordinate personnel by a body other than the Board of the Authority are ultra vires the enabling law.

15 Held, annulling the sub judice decision: (1) Section 10 of Cap. 302 conferred power on the Board of the Authority to appoint personnel needed for the discharge of its functions. Section 10 was repealed by law 25/63. As a result the power to make appointment was no longer mentioned in the statute. It follows that the new provision (section 10A), which made provision for transfer by the Authority of the exercise of functions assigned to it by law to officers or subordinate organs of the corporation could not be construed as empowering the corporation to transfer power or authority it did not possess.

20 (2) Law 61/70 conferred on Public Corporations once again the power

to make appointments and promotions.

(3) In the light of the provisions of sub-sections (1), (2) and (3) of section 3 of Law 61/70 the rule-making-power vested in CYTA by s.43 of the principal law (Cap. 302) should be read and construed as incorporating power to make regulations relevant inter alia, to the appointment and promotion of personnel. 5

(4) Subsidiary legislation must at all times come within the four corners of the enabling law and conform to its provisions. This is a corollary of the sovereignty of the legislature in its domain.

(5) In this case neither section 43 nor any other provision of Cap. 302 confer power to delegate the competence to make appointments and promotions of personnel. 10

(6) The aforesaid regulations are, therefore, void. They cannot be saved by the Assignment of the Exercise of Powers Deriving from a Law, law of 1962 (Law 23/62) because; (a) They did not delegate, but entrusted the competence to subordinate bodies, (b) Delegation under Law 23/62 can only be effected by instrument in writing specifying the terms and conditions under which a delegate could exercise the powers vested thereby. 15

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

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*Cases referred to:*

*Malachtou v. Attorney-General* (1981) 1 C.L.R. 543;

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

*Vakis v. The Republic* (1985) 3 C.L.R. 534;

*Tyllirides v. CYTA* (1987) 3 C.L.R. 2071.

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## **Recourses.**

Recourses against the decision of the respondent to promote the interested parties to section Leader B in the department of Technical Services in preference and instead of the applicants.

*A. Papacharalambous*, for applicant in Case No. 502/87.

*A.S. Angelides*, for applicant in Case No. 584/87.

*A. Hadjioannou*, for respondent.

*Ph. Valiantis*, for interested party L. Hdjigeorghalli.

*Cur. adv. vult.*

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PIKIS J. read the following judgment. The promotions of the interested parties are firstly questioned by reference to the validity of the Regulations under which they were promoted to Section Leaders B, in the department of Technical Services of the respondents. Also they are impugned for failure to follow the provisions of the Regulations themselves. The interested parties in the two recourses numbering 13 in the first and 8 in the second, were promoted by a decision of the Personnel Board of the respondents taken on 25th May, 1987, duly confirmed by a subsequent decision of the General Manager dated 29th May, 1987. The promotions were made pursuant to the provisions of the Cyprus Telecommunications Authority General Regulations 1982 (*ΚΑΠ. 220/82, published on 16th July, 1982*) hereafter referred to as the "Regulations". These regulations are, as earlier indicated, contested in the first place as ultra vires the enabling law, namely, the Inland Telecommunications Service Law Cap. 302. Assuming they are valid, counsel for the applicants argued, the sub judice decision would again be defective for breach of the Regulations themselves. The breach derives from the arbitrary action of the respondents to divide the posts to be filled and group them according to the different branches of the technical services; and proceed to make promotions according to that division, a process limiting the selection according to specialization. The adoption of this process of filling the vacant posts, resulted in failure or omission on the part of the respondents to make comparison among the candidates in the way envisaged by the Regulations, that is, by comparing their suitability for promotion to Section Leaders B, Technical Services. In addition, the sub judice decision is challenged for

failure on the part of the respondents to pay due regard to the superior qualifications for promotion of the applicants compared to all or some of the interested parties. We shall concern ourselves with the first two legal issues and then address, if it is found necessary, the third question.

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In order to resolve the validity of the Regulations, we must first ascertain the power vested in CYTA to make appointments and promotions of personnel, and then the amenity, if any, to delegate and if so, in what circumstances, the exercise of this power to personnel or organs of the Authority. Review of the provisions of Cap. 302 in their historical perspective will, I believe, provide the material for resolving the question of ultra vires of the Regulations. Section 10 of the law (Cap. 302) conferred power on the Board of the Authority to appoint personnel needed for the discharge of the functions of CYTA. After Independence need arose to amend its provisions in order to bring the law into conformity with the Constitution, notably, Part VII, entrusting power to make appointments and promotions at CYTA to the Public Service Commission. This was achieved by the enactment of Law 25/63 replacing s.10 and substituting two new provisions, s.10 and s.10A. As a result of the amendment of the law, the power of the Authority to make appointments in the corporation was removed from the statute. Section 10A made provision for transfer by the Authority of the exercise of functions assigned to it by law to officers or subordinate organs of the corporation. Section 10A could not, under any circumstances, be construed as empowering the corporation to transfer power or authority it did not possess. Therefore, it should be construed as reference to amenity to delegate the exercise of functions of the respondents other than the appointment and promotion of personnel.

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The departure of Turkish members of the Public Service Commission, following the events of 1963 - 1964, left a vacuum in the sphere of authority for the appointment and promotion of personnel in public corporations. Law 61/70 aimed to bridge this gap. It conferred authority on public corporations to make appointments and promotions as well as exercise discipline over

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personnel in their respective departments. Furthermore, it conferred rule - making power on public corporations, where non existent, to regulate the exercise of the powers vested in them by law in the interest of their efficient enforcement.

5        In the case of CYTA the organic law made provision for the issue of regulations for the better carrying out of the law into effect. In exercise of the authority vested thereby, the respondents made, with the approval of the Council of Ministers, the regulations here under review. The pertinent question, the one that calls for an immediate answer, is whether the part of the Regulations that makes  
10        provision for the appointment and promotion of personnel by a body other than the Board of the Authority was ultra vires the law. To repeat regulations 10(5) and 24 provided for the appointment of subordinate personnel, that is, personnel other than that  
15        classed as senior personnel, by a body other than the Board of the Authority; that is, by the personnel committee with the approval of the general manager.

Section 3(1) of Law 61/70 vested, as earlier indicated, competence in public corporations to make appointments and promotions of personnel in their organizations. This power should be  
20        exercised according to the explicit provisions of s. 3(2) of the same law in accordance with the provisions of the law governing the establishment and functioning of individual public corporations and regulations issued or to be issued regulating the exercise of such competence. Lastly, s.3(3) expanded the rule - making  
25        power of individual corporations to include authority to regulate by the issue of appropriate rules the exercise of the competence vested in them by s. 3(1) of Law 61/70, that is, to appoint, promote and transfer personnel and matters incidental thereto.

30        Therefore, the rule-making-power vested in CYTA by s.43 of the principal law (Cap. 302) should be read and construed as incorporating power to make regulations relevant, inter alia, to the appointment and promotion of personnel. However, authority to make regulations governing a given subject does not automatically  
35        validate every part of them. The Regulations in their entirety

and individual provisions must be a proper subject for regulation having regard to the power enabling the enactment of subsidiary legislation. Courts have proclaimed, time and again, that subsidiary legislation must at all times come within the four corners of the enabling law and conform to its provisions. This is a corollary of the sovereignty of the legislature in its domain and the absence of power to legislate, except by and in accordance with the terms laid down by the legislature itself. (*Malachtou v. Attorney-General* (1981) 1 C.L.R. 543, *Ploussiou v. General Bank* (1983) 3 C.L.R 398). And derogation from this principle would undermine the doctrine of separation of powers and lead to the assumption of legislative competence by a body other than the legislature.

Did s.43 of Cap. 302, as amended by s.3 of Law 61/70, confer power to delegate by regulations the competence vested in CYTA to make appointments and promotions of personnel?

Neither s.43 nor any provision of Cap. 302 does confer such a power explicitly or implicitly. Power to delegate authority to a body other than that nominated by law must be found in the provisions of the law itself. Authority to regulate by rules the exercise of power vested in a given body does not import power to delegate authority to subordinate organs of that body. Therefore, the respondents acting with the approval of the Council of Ministers exceeded their authority in making provision for the exercise of the power to appoint and promote by a body other than the Board of the respondents. I am, therefore, driven to the conclusion that Reg. 10(5) and 24 are ultra vires the law and the promotions here under review, made under the provisions of the subject Regulations, must likewise be invalidated as illegal and an improper exercise of the power vested in the respondents.

Before leaving this chapter we must answer the submission of counsel for the respondents to the effect that the Assignment of the Exercise of Powers Deriving from a Law, Law of 1962 (Law 23/62), provided an alternative basis for the validation of the delegation of power to the Personnel Committee with the approval of the General Manager to make appointments and promotions in the

service. The answer is again in the negative for the reasons explained below:

5       The Regulations did not delegate authority to the Personnel Committee to make appointments and promotions but entrusted it with the competence in the exercise of rule-making power claimed by the respondents. Therefore, the provisions of Law 23/62 are irrelevant to the validity of the pertinent regulations. Furthermore, assuming that Law 23/62 could be invoked by the respondents in relation to their competence to appoint and promote, a question I  
10       leave open, the delegation could only be effected in accordance with and subject to the provisions of Law 23/62, that is, by instrument in writing specifying the terms and conditions under which a delegate could exercise the powers vested thereby. Moreover, power delegated in accordance with the provisions of Law 23/62 can, in accordance with the provisions of s.4 of the law, be  
15       exercised at all times by the primary vestee of the power unless a contrary intention appears from the act of delegation. Evidently Reg. 10 of the Regulations is in no sense the act of delegation of authority made under the provisions of Law 23/62.

20       In view of the above conclusion, it is unnecessary to debate the remaining aspects of the recourses except to draw attention to the principles adopted in *Vakis v. Republic* (1985) 3 C.L.R. 534 and *Tyllirides v. CYTA* (1987) 3 C.L.R. 2071 that establish that the division of personnel eligible to promotion into categories other than those specified by the law, constitutes an impermissible  
25       exercise of the power to promote, apt to render the decision defective.

30       In view of the above, the sub judice decision is declared, pursuant to para. 4(b) of Art. 146, to be void and of no effect whatsoever. There shall be no order as to costs.

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