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[VASSILIADES, P. TRIANTAFYLLIDES, JOSEPHIDES,
HADJIANASTASSIOU, JJ.]

CYPRUS FLOUR
MILLS CO. LTD.
AND ANOTHER
v.
REPUBLIC
(COUNCIL OF
MINISTERS
AND ANOTHER)

CYPRUS FLOUR MILLS CO. LTD. AND ANOTHER,
Appellants,
and
THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF COMMERCE AND INDUSTRY,
Respondents.

(Revisional Jurisdiction Appeals No. 35 and 36).

Administrative decision—Executory administrative decision—Which can be attacked by the recourse under Article 146 of the Constitution—Paragraph 1 of that Article—Decision reached as a result of an agreed procedure between the Appellants and the Respondents—Decision of the Council of Ministers fixing the price of flour—Decision taken as a result of an agreed procedure as aforesaid—It possesses all the essential characteristics of an executory administrative Act within Article 146.1 of the Constitution—Notwithstanding that the procedure followed for the purpose was an agreed one—Such agreed procedure is not a contract within the domain of private law—Consequently, the decision reached can be challenged by the recourse under Article 146.

Administrative decision—Executory decision which can be made the subject of a recourse under Article 146 of the Constitution—Refusal of the Respondents to make available to the Applicants the data on the basis of which the aforesaid decision of the Council of Ministers regarding the price of flour (supra) was reached—Such refusal amounts to a contravention of Article 29 of the Constitution making it incumbent on the administrative authorities to accede to reasonable requests by the citizen—And can be attacked by the recourse under Article 146 of the Constitution.

Recourse under Article 146 of the Constitution—Acts or decisions which can be challenged thereby—Supra.

Agreed procedure—Decision reached as a result of an agreed

procedure—May possess all the characteristics of an executory administrative decision subject to being challenged by the recourse under Article 146 of the Constitution—Supra.

Agreed procedure as distinct from a contract within the domain of private law—Supra.

Executory act or decision—See supra.

Controlled commodity—Flour—The Supplies and Services (Regulation and Control) Law 1962 (Law No. 32 of 1962)—Regulating the price of flour—Agreed procedure to be followed for regulating the price of flour—Not an agreement within the ambit of private law—See also supra.

Flour—Controlled commodity—Regulating price—Agreed procedure to be followed—Supra.

The facts sufficiently appear in the judgment of the Court whereby, allowing these two appeals, they reversed the judgment of a single Judge of the Supreme Court dismissing the recourses of the Appellants on the ground that such recourses are not entertainable on the ground that the decisions complained of were not executory acts or decisions as being the result of an agreement within the domain of private law.

Appeals.

Appeals against the judgment of a Judge of the Supreme Court of Cyprus (Stavrinides, J.) given on the 10th January, 1968 (Revisional Jurisdiction Case Nos. 256/65 and 257/65) whereby a recourse for a declaration, *inter alia*, that the decision of the Respondents not to pay to the Appellants a difference of two mils per oke of flour sold by them for the period 25th February, 1963—23rd December 1965 was null and void, was dismissed.

A. Triantafyllides, for the Appellants.

K. Talarides, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

VASSILIADES, P.: Mr. Justice Triantafyllides will deliver the judgment of the Court.

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TRIANTAFYLLIDES, J.: By these two appeals the Appellants appeal against the judgment* given by a Judge of this Court in relation to recourses 256/65 and 257/65, which were made under Article 146 of the Constitution.

The two Appellants, who are millers, had, in substance, complained, by means of such recourses, against:—

(a) a decision of the Respondents, which was communicated to them by letter dated the 7th October, 1965, and was confirmed by a further letter dated the 4th December, 1965, to the effect that it was not justified to pay to millers more than £2.550 mils per sack of flour (of 50 okes);

(b) the refusal of the Respondents to disclose to them the contents of a report of an ad hoc Committee, on the basis of which the aforesaid decision had been reached; and

(c) the omission of the Respondents to decide promptly on the question of the price of flour.

The trial Judge dismissed the recourses on the grounds:—
(i) that the decision complained of was not an executory act and, therefore, it could not be challenged by means of recourses based on Article 146; (ii) that the refusal to disclose the contents of the report in question was not, for the same reason, a matter which could be challenged under Article 146; (iii) that as the alleged omission related to a subject outside the ambit of Article 146 such omission could not be challenged under this Article, either.

The history of the matter goes back to a decision of the Respondent Council of Ministers, dated the 23rd February, 1963 (Decision No. 2759), which reads as follows:—

The Council decided —

“(a) to authorize the Minister of Commerce and Industry to inform the millers that Government has accepted their proposal for a reduction, with effect from the 25th February, 1963, of the present price of flour from £2.650 mils to £2.550 mils per sack of 50 okes, on condition that an expert is appointed by Government to enquire into the real costs of milling and that, if the result of the expert’s enquiry is that the price per sack of flour should be —

* Reported in (1968) 3 C.L.R. 12.

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- (i) lower than £2.550 mils, then the millers will pay Government the difference between such lower price and £2.550 mils;
- (ii) £2.550 mils, then such price will be the one at which the millers will continue to sell their flour, and no payment will be effected on either side;
- (iii) between £2.550 mils and £2.650 mils, then Government will refund to the millers the difference between £2.550 mils and the price so found;
- (iv) over £2.650 mils, then Government will refund to the millers the difference of 100 mils but in no case more than that.

Any payments required under the above conditions will be made with retrospective effect from the 25th February, 1963;

- (b) to authorize the Minister of Labour and Social Insurance, should the bakers' threatened strike materialize, to invoke Defence Regulation 79A and arrange for the issue of the necessary Direction thereunder.

This decision of the Council has to be looked upon in its proper context: It was reached at a time when the price of bread had already been regulated, as a controlled commodity within the ambit of the Supplies and Services (Regulation and Control) Law, 1962 (Law 32/62), by an Order made on the 25th January, 1963 (see Not. 50 in the 3rd Supplement to the official Gazette). It was clear that, as the price of flour was directly connected with the price of bread—the price of which had already been regulated—the Government could, and the millers could reasonably anticipate that the Government would, have resorted to the same means for regulating the price of flour, a basic commodity, had the millers, including the Appellants, not agreed to the procedure embodied in the above-quoted decision of the Council of Ministers.

It was as a result of such procedure that, eventually, the Government informed the millers that there was no justification for paying them anything above £2.550 mils per sack of flour; this decision having been based on the report which was prepared by the aforesaid ad hoc Committee.

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Protests by the Appellants against such decision, coupled with a request for its review and, also, with a claim that the relevant report be made available to them, produced no change in the position taken by the Government in the matter; and there was, also, a refusal to disclose the report.

Consequently, the Appellants filed their recourses on the 30th December, 1965.

With great respect to the view taken by the learned trial Judge, we cannot agree that the *sub judice* decision of Government, regarding the price of flour, is not an administrative act of an executory nature.

It may well have been reached as a result of an agreed procedure, in lieu of an immediate Order regulating the price of flour, but it is, nevertheless, a decision possessing all the essential characteristics of an executory administrative decision—as they are correctly stated in the judgment under appeal—and, therefore, we have reached the conclusion that it could be attacked by recourse under Article 146.

While on this point we might state that we do not agree with learned counsel for Respondents that the agreement set out in the decision of the Council of Ministers of the 23rd February, 1963, is an agreement in the realm of private law and that the remedy, if any, of the Applicants would lie, only, before a civil Court. In the circumstances in which such agreement came to be reached it is clear that it was not a matter of private law and it resulted, as already stated, in a decision of the Respondents which can be challenged by recourse under Article 146.

In the result the relevant part of the judgment of the trial Judge is set aside and the validity of the decision challenged by the two recourses of the Appellants has to be considered and determined on the basis of the principles governing the exercise of the jurisdiction under Article 146 of the Constitution; these cases should, therefore, be fixed for hearing for this purpose.

Furthermore, and in the same context, we find that the refusal of Government to make available the material data on the basis of which its administrative decision regarding the price of flour was reached—especially after the Appellants had complained against such decision and requested to be

furnished with the report on which the decision had been founded—amounts to a contravention of Article 29 of the Constitution, which has been referred to expressly by the Applicants in their recourses; and such refusal could be attacked by a recourse under Article 146.

In the circumstances we declare the refusal in question to be *null* and *void* and of no effect whatsoever and it is now up to Government to re-examine its stand on this point and to disclose the said material data to such an extent as to meet the requirements of Article 29.

Regarding the alleged omission, we have not been satisfied that there has been made out, sufficiently, by the Appellants, a case of an omission in the sense of Article 146 of the Constitution, which would entitle them to succeed against it; especially, as the rights of the Appellants are safeguarded with retrospective effect by means of the decision of the Council of Ministers dated the 23rd February, 1963.

In the result these appeals succeed to the extent stated in this judgment.

As to costs we decided that the Appellants, having succeeded in the substance of their appeals, are entitled to their costs in the appeals.

Appeal allowed with costs.

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