

1971
Mar. 30,
June 8

KANTARA
SHIPPING
LIMITED
v.
REPUBLIC
(DIRECTOR
OF INLAND
REVENUE)

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

KANTARA SHIPPING LIMITED,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF THE DEPARTMENT
OF INLAND REVENUE,

Respondent.

(*Revisional Jurisdiction Appeal No. 56*).

Constitutional law—Taxation—Tax overdue—Surcharge 5% imposed on any amount in default after the prescribed date—Section 8(1) of the Tax Collection Law 1962 (Law No. 31 of 1962)—There is nothing unconstitutional either in the relevant administrative action imposing or claiming 5% surcharge under said section 8(1) or in the legislative provision on which it was based—Such administrative as well as said statutory provision not repugnant to Articles 12, 24, 28 and 30 of the Constitution.

Note : The aforesaid overdue tax in the instant case was a tonnage tax, duly assessed in respect of five ships of the appellant company for the year 1967 under section 4 of the Merchant Shipping (Taxing Provisions) Law, 1963 (Law No. 47 of 1963) and which was paid three days after the prescribed date.

Constitutional law—Automatic imposition of surcharge under section 8(1) of the Tax Collection Law 1962 (supra) on any tax (or part thereof) overdue after the prescribed date does not contravene Article 30 of the Constitution—Because no criminal charge is involved and because such surcharge being a matter of liability under a fiscal law, which is a branch of public law, and not of private law, is not within the ambit of the phrase “civil rights or obligations” in the said Article—Vide in this sense, also, the interpretation given to the corresponding provision in Article 6(1) of the European Convention on Human Rights (which is part of our Cyprus law) by the European Commission of Human rights of the Council of Europe (infra).

Constitutional law—Delay to pay tax which became due and payable—Not an “offence” (ἄδίκημα) within Article 12, paragraph 3, of the Constitution—Nor is the relevant said surcharge of 5% under section 8(1) of the Tax Collection Law 1962 a “punishment” (ποινή) within the said Article.

Tax Collection Law 1962 (Law No. 31 of 1962)—Meaning and purpose of “ surcharge ” provided in section 8(1) of the Law

Surcharge—Tax overdue—See supra, passim.

Taxation—Surcharge—Tonnage tax—See supra, passim.

Words and Phrases—“ Civil rights or obligations ” in Article 30.2 of the Constitution—“ Offence ” and “ punishment ” in Article 12.3 of the Constitution—“ Surcharge ” in section 8(1) of the Tax Collection Law, 1962 (Law No. 31 of 1962).

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This is an appeal from the judgment of a Judge of the Supreme Court dismissing the appellant's recourse which was made under Article 146 of the Constitution (see this case now reported in (1969) 3 C.L.R. 95).

The salient facts of the case are briefly as follows :

In accordance with the provisions of section 4 of the Merchant Shipping (Taxing Provisions) Law, 1963 (Law No. 47 of 1963), the tonnage tax payable in respect of five ships of the appellant company for the year 1967 was duly assessed, and the appellant was notified accordingly. The notification contained an express warning that if the said tonnage tax, or any part thereof, was not paid on or before the prescribed date (*i.e.* January 15, 1967) an additional 5% surcharge, on any amount of tax in default, would become due and payable under the provisions of section 8 of the Tax Collection Law, 1962 (Law No. 31 of 1962). Due to the absence of a director of the appellant company the relevant cheque was not delivered to the Inland Revenue Department until January 18, 1967. The reason for the delay—which was a *bona fide* one—was explained in writing to the respondent Director of the Department of Inland Revenue, who replied, also in writing, stating that “ much as I appreciate the reasons for the small delay in the payment of the tax, I have no power under the law to waive the 5% penalty ”, and requested to be paid the said amount as early as possible.

It is this decision of the respondent which gave rise to the recourse referred to above : the recourse was eventually dismissed (*supra*), the learned Judge of the Supreme Court, who decided the case in the first instance (*supra*), holding that respondent's decision was a valid one. It is from this Judgment that the applicant took the present appeal before the Full Bench of the Supreme Court.

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Dismissing the appeal on all grounds, the Court :

Held, (1) (a). The first contention of the appellant was that the imposition of the surcharge is in reality a “punishment” and that, thus, the non payment of the tonnage tax by the prescribed date was treated, in substance, as an offence ; hence, counsel argued, section 8(1) of the Tax Collection Law, 1962 (*supra*) is contrary to the provisions of Article 12.3 of the Constitution under which “punishment” must be proportionate to the gravity of the “offence” ; such “punishment” being, in his submission, clearly disproportionate in the light of the circumstances of the present case.

(b) We have no doubt whatsoever that a delay to pay tax, such as the one in the present instance, cannot, in view of its essential nature, be an “offence” (ἀδίκημα), nor can, likewise, the relevant surcharge be a “punishment” (ποινή), within the meaning of the said words in Article 12 of the Constitution (*supra*). We have, therefore, found no difficulty in holding that the administrative action complained of by the appellant, as well as the legislation on which it has been based, viz. section 8(1) of the Tax Collection Law 1962, are not contrary to Article 12 of the Constitution (see, also, in this respect *Georghallides v. The Village Commission of Ayia Phyla*, 4 R.S.C.C. 94, at p. 97).

(2) (a) The next question with which we have to deal is whether the said administrative action and legislation are contrary to Article 24 of the Constitution which (together with Article 28) gives constitutional force to the principle of equality of treatment in taxation matters (see *Mikrommatis and The Republic*, 2 R.S.C.C. 125, at p. 131, and *In re Hji Kyriacos and Sons Ltd.*, 5 R.S.C.C. 22, at p. 29).

(b) We are of the view that the surcharge in question provided for in section 8(1) of the Tax Collection Law, 1962, is not in reality a “tax” but exactly what it is described as being in the said provision, in other words a “surcharge”, the purpose of which is not to impose an increased or disproportionate tax in any particular case but to compensate the public funds for the extra expense involved in the existence and functioning of a state machinery for the collection of overdue taxes of various kinds (see, again, *Georghallides case, supra*) ; and it is quite significant to note in this connection that section 8(1) (*supra*) is not a section applicable to any particular kind of taxation, but to all kinds of taxation, except taxation for which other provision is made in relevant thereto legislation.

(3) (a) It remains to deal with the contention that through the automatic imposition of the surcharge, under the provisions of section 8(1) (*supra*), the appellant has been deprived of a hearing in the matter, contrary to the provisions of Article 30 of the Constitution, which lays down that every person is entitled to a fair hearing before a Court of law "in the determination of his civil rights or obligations or of any criminal charge against him".

(b) We have already held that there is no question of any criminal charge being involved. We are, further, of the view that this being a matter of liability under a fiscal law which is a branch of public law, and not of private law, it is not within the ambit of the phrase "civil rights or obligations". We take this view in the light, *inter alia*, of the interpretation given to the corresponding provision of Article 6(1) of the European Convention on Human rights—which by virtue of the European Convention on Human Rights (Ratification) Law, 1962 (Law No. 39 of 1962) and of Article 169.3 of the Constitution forms, too, part of the law of Cyprus—by the European Commission of Human Rights of the Council of Europe not only in the case of *X. against Belgium* (application No. 2145/64, reported in the 1965—Vol. 8—Yearbook of the Convention on Human Rights p. 282, at p. 312) which has been referred to by the learned trial Judge in his judgment appealed from, but also in the cases of *A.B.C. and D. against The Netherlands* (applications Nos. 1094/63, 2029/63, 2094/63 and 2217/64, reported in the 1966—Vol. 9—Yearbook of the Convention on Human Rights p. 268, at p. 284); in the said cases the earlier decision of the Commission in *X. against Belgium* was expressly affirmed.

(c) It should not be lost sight of that, regarding the complaint, itself, of the appellant about the constitutionality of the administrative action challenged, he has had a hearing before the competent Court, the Supreme Court, under Article 146 of the Constitution.

(4) In the result, the appeal must be dismissed; but in the circumstances we decided, in view of the novel issues raised, not to make an order as to costs.

Appeal dismissed. No order as to costs.

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Cases referred to :

Georghallides and The Village Commission of Ayia Phyla,
4 R.S.C.C. 94, at p. 97 ;

Mikrommatis and The Republic, 2 R.S.C.C. 125, at p. 131 ;

In re Hji Kyriacos and Sons, 5 R.S.C.C. 22, at p. 29 ;

*Decisions of the European Commission of Human Rights of
the Council of Europe :*

X. against Belgium (application No. 2145/64, reported in the
1965—Vol. 8—Yearbook of the Convention on Human
Rights p. 282, at p. 312) ;

A.B.C. and D against The Netherlands (applications Nos.
1094/63, 2029/63, 2094/63 and 2217/64, reported in the
1966—Vol. 9—of the Yearbook of the Convention on
Human Rights p. 268, at p. 284).

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (L. Loizou, J.) given on the 14th February, 1969 (Revisional Jurisdiction Case No. 41/67), whereby appellant's recourse against the decision of the respondent to impose 5 per cent surcharge because of appellant's failure to pay tonnage tax on the due date was dismissed.

G. Cacoyiannis, for the appellant.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following reasons for judgment were delivered by :

TRIANTAFYLIDIS, P. : On the 30th March, 1971, the then President of the Supreme Court Mr. Justice Vasiliades with Justices Josephides, Stavrinides, Hadjianastasiou and myself gave judgment in this case as follows :

“ This appeal is dismissed ; the administrative action concerned and the legislation on the basis of which it was taken are not unconstitutional as being contrary to Articles 12, 24, 28 and 30 of the Constitution.

Reasons for the judgment will be given later.

No order as to costs in this appeal.”

We shall now proceed to give the reasons of the Court for its judgment :—

This is an appeal from the judgment* of a Judge of the Supreme Court who decided recourse No. 41/67, which was filed under Article 146 of the Constitution.

The salient facts of the case are briefly as follows :

In accordance with the provisions of section 4 of the Merchant Shipping (Taxing Provisions) Law, 1963 (Law 47/63), the tonnage tax payable in respect of five ships of the appellant company for the year 1967 was duly assessed, on the basis of the rates set out in the Schedule to the said Law, and the appellant was notified accordingly. The notification contained an express warning that if the said tonnage tax, or any part thereof, was not paid on or before the prescribed date an additional 5% surcharge, on any amount of tax in default, would become due and payable under section 8 of the Tax Collection Law, 1962 (Law 31/62).

Half of the said tonnage tax was payable on the 15th January, 1967 ; but, due to the absence of a director of the appellant company, it did not become feasible to sign the relevant cheque until the 17th January, 1967, and such cheque was not delivered to the Inland Revenue Department until the 18th January, 1967. The reason for the delay—which was a *bona fide* one—was explained in writing to the respondent Director of the Department of Inland Revenue, who replied, also in writing, stating that “ much as I appreciate the reasons for the small delay in the payment of the tax, I have no power under the law to waive the 5% penalty ”, and requested to have paid the said amount as early as possible.

It is this decision of the respondent, to insist on the payment of the “ penalty ”, that gave rise to recourse 41/67 ; the recourse was eventually dismissed, because the learned Judge of this Court who decided the case in the first instance, found that the respondent’s decision was a valid one.

Section 8 (1) of Law 31/62, on the basis of which the *sub judice* administrative action was taken, provides that, subject to any other provision in the relevant Law, for a surcharge or increase in the amount due, a person owing any tax who has not paid the amount due by him within

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the period laid down for payment by the relevant Law shall be required to pay a surcharge equal to five per centum of the amount of the tax remaining unpaid after the expiration of the aforesaid period.

This appeal was made on several grounds, raising points of law which were dealt with in, and rejected by, the judgment appealed from.

The first ground of appeal, *viz.* that the imposition of the surcharge in question, under section 8(1), amounts to inhuman or degrading punishment or treatment, contrary to Article 8 of the Constitution, was rightly in our opinion, abandoned by learned counsel for the appellant.

The next contention of the appellant was that the imposition of the surcharge is in reality a punishment and that, thus, the non-payment of the tonnage tax by the prescribed date was treated, in substance, as an offence; hence, counsel argued, section 8(1) is contrary to the provisions of Article 12 of the Constitution, in that, *inter alia*, it provides for "punishment which is disproportionate to the gravity of the offence"; such punishment being, in his submission, clearly disproportionate in the light of the circumstances of the present case.

Though we shall not, and need not, for the purposes of this appeal, define in full the meaning of the words "ποινή" (punishment) and "ἀδίκημα" (offence), as used in the official Greek text of Article 12 of the Constitution, we have no doubt whatsoever that a delay to pay tax, such as the one in the present instance, cannot, in view of its essential nature, be an offence (ἀδίκημα), nor can, likewise, the relevant surcharge be a punishment (ποινή), within the meaning of the said words in Article 12. We have, therefore, found no difficulty in holding that the administrative action complained of by the appellant, as well as the legislation on which it has been based, *viz.* section 8(1) of Law 31/62, are not contrary to Article 12 (see, also, in this respect *Georghallides and The Village Commission of Ayia Phyla*, 4 R.S.C.C. 94, at p. 97).

The next question with which we had to deal was whether the said action and legislation were contrary to Article 24 of the Constitution which (together with Article 28 of the Constitution) gives constitutional force to the principle of equality of treatment in taxation matters (see

Mikrommatis and *The Republic*, 2 R.S.C.C. 125, at p. 131, and *In re Hji Kyriacos and Sons Ltd.*, 5 R.S.C.C. 22, at p. 29).

We are of the view that the surcharge provided for in section 8(1), above, is not, in reality, a "tax", but exactly what it is described as being in the said provision, in other words a "surcharge", the purpose of which is not to impose an increased or disproportionate tax in any particular case but to compensate the public funds for the extra expense involved in the existence and functioning of a state machinery for the collection of overdue taxes of various kinds (see, again, the *Georghallides* case, *supra*); and it is quite significant to note in this connection that section 8(1) is not a section applicable to any particular kind of taxation, but to all kinds of taxation, except taxation for which other provision is made in relevant thereto legislation.

It remains to deal with the contention that through the automatic imposition of the surcharge, under the provisions of section 8(1), the appellant has been deprived of a hearing in the matter, contrary to the provisions of Article 30 of the Constitution, which lays down that every person is entitled to a hearing before a Court of Law "in the determination of his civil rights and obligations or of any criminal charge against him". We have already held that there is no question of any criminal charge being involved. We are, further, of the view that this being a matter of liability under a fiscal law which is a branch of public law, and not of private law, it is not within the ambit of the phrase "civil right or obligation". We take this view in the light, *inter alia*, of the interpretation given to the corresponding provision of Article 6(1) of the European Convention on Human Rights—which by virtue of the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62), and of Article 169.3 of our Constitution forms, too, part of the law of Cyprus—by the European Commission of Human Rights of the Council of Europe not only in the case of *X against Belgium* (application No. 2145/64, reported in the 1965—Vol. 8—Yearbook of the Convention on Human Rights p. 282, at p. 312), which has been referred to by the learned trial Judge in his judgment, but also in the cases of *A.B.C. and D against The Netherlands* (applications Nos. 1094/63, 2029/63, 2094/63 and 2217/64, reported in the 1966—Vol. 9—Yearbook of the Convention on Human Rights p. 268, at p. 284); in the said cases the earlier decision of the Commission in *X against Belgium* was expressly affirmed.

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It should not be lost sight of that, regarding the complaint, itself, of the appellant about the constitutionality of the administrative action challenged, he has had a hearing before the competent Court, the Supreme Court, under Article 146 of the Constitution.

For the reasons stated, this appeal has been dismissed ; but in the circumstances we decided, in view of the novel issues raised, not to make any order as to costs.

*Appeal dismissed. No order
as to costs.*