

1984 November 26

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

UNITED OIL INDUSTRIES LTD.,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMERCE AND INDUSTRY,

Respondent.

(Case No. 302/71).

Legitimate interest—Article 146.2 of the Constitution—Unreserved and free acceptance of an act or decision of the administration—Deprives acceptor of a legitimate interest to file an administrative recourse under Article 146.1 of the Constitution—Acceptance by applicants of the provisions of the Olive Oil Law, 1963 (Law No. 23/63)—They cannot challenge by means of a recourse any act or decision taken by virtue of such provisions.

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Following the enactment of Law 23/63 which by its section 5 prohibited the importation, preparation or sale of esterified oil and, also, provided for the sealing of all equipment and machinery used for the esterification of oil, the applicants who were dealing with the manufacture and preparation of esterified oils, as early as 1963 complied without any protest or reservation, with the provisions of the law relating to the sealing of their machinery and informed the respondents of such compliance by means of a letter dated 12th October, 1983. The respondent rejected applicants' request (a) for grant to them of an import licence of 2 tons of glycerine intended for use for the preparation of esterified oils in their factory and (b) for the removal of the seal of their machinery; and hence this recourse.

The rejection of the requests was made on the ground that they were contrary to section 5 of Law 23/63.

Held, that a person who unreservedly and freely accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision; that the applicants having freely and without any reservation accepted the provisions of Law 23/63 they cannot put in force its prohibition provisions by means of their request; that, therefore, they have been deprived of a legitimate interest, in the sense of Article 146.2 of the Constitution, to challenge by means of a recourse any act or decision taken by virtue of the provisions of section 5 of Law 23/63 such as the act complained of which indeed was taken under the aforesaid section; and that, accordingly, the recourse must fail.

Application dismissed.

Cases referred to:

Megalemou v. Republic (1968) 3 C.L.R. 581;

Constantinidou v. Republic (1974) 3 C.L.R. 416;

Recourse.

Recourse against the refusal of the respondent to grant applicants an import permit for 2 tons of glycerine for the purpose of manufacture and/or preparation of esterified oils.

A. Triantafyllides, for the applicant.

L. Loucaides, Deputy Attorney-General of the Republic, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these proceedings, the applicants apply for the following relief:

- (a) Declaration that the decision of the respondents contained in exh. 2 attached hereto not to grant applicant's request for an import permit of 2 tons of glycerine for the purpose of manufacture and/or preparation of esterified oils is null and void and of no effect whatsoever.
- (b) Declaration that the decision of the Respondents; contained in exh. 2 attached hereto not to remove

5 the sealing from applicant's machinery used in connection with the manufacture and/or preparation of esterified oils is null and void and of no effect whatsoever and/or the omission so to do ought not to have been made and whatever has been omitted should have been performed.

(c) Costs.

The present application is based on the following grounds of law:

10 1. Law 23/63, on which exh. 2 is based, and particularly ss.3 and 5 thereof, are unconstitutional contrary to Article 23, 25 and 28 of the Constitution.

Particulars:

Article 25

15 Applicants' industry and business constitutes property within the meaning of Art. 23 of the Constitution. Law 23/63 and particularly ss. 2 and 5 thereof, impose restrictions and/or limitations which are not warranted by Art. 23.3 of the Constitution. Alternatively, the provisions of Law 23/63 and particularly of
20 ss. 2 and 5 thereof, amount to compulsory acquisition of that line of Applicants' business dealing with the manufacture and preparation of esterified oils and such acquisition is contrary to Art. 23.4 and/or law 15/62.

Article 25

25 Law 23/63 and particularly ss.2 and 5 thereof impose conditions and/or restrictions on applicants' right to free trade and business, such restrictions being outside the ambit of Art. 25.3 of the Constitution.

Article 28

30 Other industries and/or other food industries e.g. soft drinks, breweries, milk industries and the like do not have similar or analogous restrictions or limitations on their right to property, trade and business.

35 2. In any case, the prohibition contained in ss.2 and 5 of Law is not justified at any rate, in so far as:-

- (a) the preparation and sale of oils for industrial purpose is concerned and in so far
- (b) the preparation and sale of edible oils destined for export are concerned.

In other words, even if the Court could uphold the restrictions of s.2 of law 23/63 in so far as edible oils for the Cyprus markets is concerned, there is absolutely no justification in prohibiting the preparation and manufacture of esterified oils for industrial purposes or esterified edible oils destined for export to countries like the U.K. which are an excellent market for esterified edible oils.

3. Other continental countries do not prohibit esterified oil for industrial purposes or for export. Indeed, in many countries there is no prohibition for the preparation or manufacture by esterification of edible oils either.

The following facts are relied upon in support of the present application:-

1. Applicants are the sole olive oil industry in Cyprus.
2. Applicants were formed in 1965 from the amalgamation of Cyprus Oil Industries of Kyrenia and Larnaca Oil Works of Larnaca.
3. For several years past, i.e. since 1955, applicant's predecessor in title Cyprus Oil Industries of Kyrenia, had introduced in Cyprus the system of preparation and manufacture of refined olive oils through inter alia the method of esterification and, to that end, they imported machinery of considerable value.
4. In 1963, Law 23/63 was enacted ss.2 and 5 whereof prohibit the esterification of oils. Such prohibition extends not only to edible oils but also to oils meant for industrial uses as well as for those edible or industrial oils destined for export and not for home consumption.
5. Applicants and/or their said predecessors in title suffered and continue to suffer extensive damage as a result of the aforesaid prohibition and they reserve all their rights in connection therewith.

6. On 12.7.1971 applicants addressed exh. 1 to respondents to which respondents replied by exh. 2.

On the 9th July, 1971, counsel for the applicants addressed the following letter to the Minister of Commerce and Industry:

5 "We refer to the Law 23/63 and particularly to s.5 by which, inter alia, it is prohibited among other things, the preparation and/or sale of esterified oil in Cyprus. According to legal advice, which we have received, the said section and/or the said prohibition is unconstitutional because it
10 is contrary to Articles 23 and 25 of the Constitution.

By the present letter we request you

- (a) to grant to us an import licence of 2 tons of glycerine which we intend to use for the preparation of esterified oil in our factory;
- 15 (b) the removal by your Ministry of the said seal of our machinery and/or industrial appliances and generally the production of esterified oil.

We shall be very much obliged if you would reply to our present application within a period of 30 days as
20 provided by Article 29 of the Constitution".

On the 15th July, 1971, the Director-General of the said Ministry had this to say in reply to the above letter:

"Κύριοι,

25 Ενετάλην όπως αναφερθώ εις την επιστολήν σας ημερ. 9 Ιουλίου 1971 και εις τα εν αυτή αιτήματά σας και να παρατηρήσω ότι ταύτα προσκρούουν σαφώς εις τας διατάξεις του άρθρου 5 του Νόμου 23/63 αι οποίαι καθιστούν τοιαύτας ενεργείας ποινικά αδικήματα.

30 'Όθεν, δεν τίθεται θέμα οιασδήποτε εκ μέρους ημών ενεργείας επί του περιεχομένου της προειρημένης επιστολής σας, αλλά παραπέμπεσθε προς καθοδήγησιν εις τας ρητάς διατάξεις του προειρημένου νόμου".

("Sirs,

35 I am directed to refer to your letter dated 9th July, 1971 and to your requests in it and point out that they come into

conflict with the provisions of section 5 of Law 23/63 which constitute such acts criminal offences.

Therefore there does not arise any point for any action on our part on the contents of your said letter, but you are referred for guidance to the express provisions of the said Law”). 5

The opposition is based on the following grounds of law:

- (1) The decisions complained of were lawfully taken in accordance with the provisions of s.5 of Law 23/63;
- (2) The provisions of Law 23/63 on which the decisions complained of were based are not in any way contrary to Articles 23, 25 or 28 of the Constitution. 10

The following facts are relied upon in opposition:

The decisions complained of as per exh. 2 attached to the application were taken for the reasons set out therein. 15

Learned counsel for the respondents in his address raised two issues, namely that the recourse is out of time, and secondly that the prerequisites as to adverse effect on the applicant's legitimate interest under Article 146 do not exist as the applicants have expressly and in any case by implication clearly accepted the effect of the act complained of. 20

Pausing here for a moment, I would state that both these issues could be raised even at the stage they were raised, for it is well settled that the aforesaid issues can be raised even by the Court ex proprio motu (see, inter alia, *Megalemou v. The Republic*, (1968) 3 C.L.R. 581 and *Constantinidou v. Republic*, (1974) 3 C.L.R. 416). 25

I consider it appropriate to deal first with the issue of legitimate interest, and I will deal hereinafter with the facts on which such issue is founded. Following the enactment of Law 23/1963 which by its section 5 prohibited the importation, preparation or sale of esterified oil and, also, provided for the sealing of all equipment and machinery used for the esterification of oil, the applicants, as early as 1963, complied without any protest or reservation, with the provisions of the law relating to the sealing of their machinery and informed the respondents 30 35

of such compliance by means of a letter dated 12th October, 1983. Now, the letter exhibit 2, which contains the act complained of is nothing more than a strict implementation of the provisions of the aforesaid section 5 of Law 23/63.

5 It is by now well-settled that a person who unreservedly and freely accepts an act or decision of the administration, is deprived because of such acceptance of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision (see *Tomboli v. CYTA*, (1982)
10 3 C.L.R. 149) a judgment of the Full Bench where it was held that the applicant was deprived of a legitimate interest to file a recourse against the validity of a decision concerning her retirement age in view of her free and unreserved acceptance, of certain regulations and the exercise of an option thereunder,
15 providing for the retirement age complained of. (See, also, *Ionides v. Republic*, (1979) 3 C.L.R. 679; *Zambakides v. Republic*, (1982) 3 C.L.R. 1017). So, too, in this case, the applicants having freely and without any reservation accepted the provisions of Law 23/63 they cannot put in force its prohibition
20 provisions by means of their letter exhibit 1. In the circumstances, I am bound to conclude that they have been deprived of a legitimate interest, in the sense of Article 146.2 of the Constitution, to challenge by means of a recourse any act or decision taken by virtue of the provisions of section 5 of
25 the above law, such as the act complained of which indeed was taken under the aforesaid section. Accordingly, the recourse must be dismissed. Having disposed of the recourse as above, I need not deal with the first issue. Regarding costs, I think, that in view of the belated stage at which the above two issues
30 were raised, the applicants will not be burdened with costs.

Recourse dismissed with no order as to costs.