1987 February 16

[TRIANTAFYLLIDES P., SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

1. THE REPUBLIC OF CYPRUS, THROUGH
(a) THE MINISTER OF COMMERCE AND INDUSTRY
(b) THE MINISTER OF FINANCE

2. THE CYPRUS GRAIN COMMISSION,

Appellants-Respondents,

v.

MAKARONOPEION G. CARKOTIS LTD.,

Respondents-Applicants.

(Revisional Jurisdiction Appeal No. 427).

he Grain Control Law, Cap. 68, as amended by law 54/62—Intention of legislator—Controlled articles—New products originating from process of baking or manufacture of controlled products—No intention of controlling such new products—Where there was such an intention, e.g. as regards bread, a specific provision was made in the law—Section 3,5(1) (f), 19(1) and 21—Definitions of «grain» «flour» and «bread».

egitimate interest—Constitution, Art. 146.2—Acceptance of an administrative act—If free and voluntary deprives acceptor of such an interest—Payment of fee imposed as a condition of licence for export of goods—Protest lodged before communication of sub judice decision and recourse filed within a few days thereafter—Applicants pressed to export their goods—In the circumstances the payment did not amount to such an acceptance

egitimate interest—Constitution, Art. 146.2—Acceptance of previous acts similar but independent from sub judice act—Acceptor not deprived of his legitimate interest in respect of the sub judice act.

The applicants own and operate a macaroni producing factory. The factory deals with local sales as well as with exports. By letter dated 26.5.80 appellants 2 informed the respondents that for the purpose of a licence for export they will have to pay £20 per ton of exported macaroni for the months of May and June 1980. As a result the respondents filed recourse 167/80 and a Judge of this Court annulled the said decision*. The respondents in the said recourse filed the present appeal.

In the course of the hearing of the appeal counsel for the appellant raised

*See Makaronopeion G. Carkotis Ltd. v. The Republic and Another (1987) 3 C.L.R. 52.

an additional ground of law, namely that the respondents had been deprive of their legitimate interest because such a fee had been continuously imposed for a number of years on exports of macaroni by the respondents, who ha never protested and, also, because in the present case they had paid witho protest the fee imposed by the sub judice act

It should be noted that the respondents, who came to know of the sub judice decision before the 26 5 80, had protested by letter dated 16 5 80 to the Ministry of Commerce and Industry against the imposition of the fee The said recourse was filed on the 29 5 80 The Ministry replied to the said lette by letter dated 11 9 80

Counsel for the appellants further submitted that macaroni is a produc made entirely of semolina, which is a product wholly coming from grain which is a controlled article by virtue of Cap 68 after the grain is milled and as such, falls within the definition of a controlled article and is subject to the provision of section 3(1) He contended that the trial Judge misdirected himself by reading s 19 of Cap 68 in conjunction with section 3 Finally he relies on s 5 (1) (f) of the said law which gives a wide power to the appellants to regulate anything having to do with a controlled article

Held, dismissing the appeal (A) *On the issue of the respondents' legitimate interest* (1) The imposition of a fee on each of the previous occasions that an application for the export of macaroni was submitted was by itself a complete administrative act which could be challenged by a recourse The sub judice act is an entirely complete act by itself independent of any similar previous act

(2) The respondents, who were pressed to export their goods paid the fee imposed by the sub judice act waiting for the decision of the Ministry in respect of their protest lodged on the 16 5 80 Notwithstanding the above they filed their recourse within a very short time from the receipt of the letter dated 26 5 80 It follows that in the circumstances it cannot be said that the payment of the fee amounted to an act of unconditional acceptance of the sub judice act emanating from their free consent and volition

B) *On the question whether macaroni is a controlled article within the provisions of Cap 68* (1) The intention of the legislator was to control grain as such and its by-products after grinding and also the disposition of grain and flour

(2) Nowhere in the law or regulations* there exists any provision as to the control of products originating from any of the controlled articles which by having undergone process of baking or manufacture, are converted into a

**The Court cited in the judgment the provisions of sections 3 5(1) (f) 19(1) the definition of «grain» in s 2, the definition of «flour» in s 19(2), the definition of «bread» in s 19(2) and referred to Regulations made before and after Independence under section 21 of the Law*

new product entirely different from the original article Macaroni is such a new product Where there was an intention to control such a new product, an express provision was made in the law, as in the case of bread, «the product produced by baking flour», under s 19(1) of the law

Appeal dismissed. 5
No order as to costs

Cases referred to

Tomboli v CYTA (1980) 3 C L R 266 and on appeal (1982) 3 C L R 149,

Ayoub v Republic (1985) 3 C L R 70,

Christodoulides v Republic (1985) 3 C L R 1979, 10

Hadji Constantinou and Others v Republic (1984) 3 C L R 319,

The Republic v K M C Motors Ltd (1986) 3 C L R 1899,

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 30th November, 15 1984 (Revisional Jurisdiction Case No. 167/80)* whereby the decision of the appellants - respondents to require the respondents - applicants to pay £20.- per ton of macaroni exported during the months of May and June, 1980 in order to secure an export licence was annulled. 20

C Velans with X. Fotiou (Miss), for the appellants.

Chr Triantafyllides, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides. 25

SAVVIDES J.: This is an appeal against the judgment of a Judge of this Court exercising the revisional jurisdiction of the Court, annulling the decision of appellant 2, respondent in the application, dated 26th May, 1980, prescribing that the respondents-applicants had to pay £20.- per ton of macaroni exported by them 30 for the months of May and June, 1980, in order to secure an export licence.

*Reported in (1987) 3 C L R 52

The respondents, applicants before the trial Court, own a macaroni producing factory The said factory deals with local sales, as well as with exports Concerning exports, the respondents deal with 90 per cent of the exports of macaroni from Cyprus which constitutes 60 per cent of the overall production of the factory On the 26th May, 1980, the Cyprus Grain Commission addressed a letter to the respondents in which it had this to say

«By the present letter we inform you that for the purposes of an export licence, the price which you will have to pay for each ton of macaroni exported will be £20 - for the months of May and June, 1980 »

The respondents who came to know about the decision of the appellants earlier, as a similar imposition of a fee for macaroni exported was claimed from them on previous occasions, wrote, through their advocate, a letter on the 16th May, 1980, to the Ministry of Commerce and Industry protesting against the imposition of such fee

No reply was sent to the respondents, on the matters raised in their letter, by the 26th May, 1980, when appellant 2 addressed to them the letter containing the sub judice decision

After the filing of this recourse and in fact on the 11th September, 1980, a letter was sent by the Ministry of Commerce and Industry, in reply to the respondents' letter of the 16th May 1980 explaining the reasons why such fee was imposed by the Grain Commission, which mainly turns on the allegation that wheat is a subsidised product for the benefit of consumers in Cyprus and when a product derived mainly from wheat is exported, a fee had to be paid on account of the subsidy of wheat by the Government

The case before the trial Court focussed on the question whether macaroni is a «controlled article» within the ambit of section 3 of the Grain Control Law (Cap 68) and as such subject to the power of appellant 2 to impose any conditions on its export and in particular, as in the present case, to impose a fee of £20 per ton.

The learned trial Judge after making reference to the provisions in the relevant law and in particular section 3, read in conjunction with section 19, which empowers the Council of Ministers when making a control order under sub-section (1) of section 3 to

nclude bread therein as a controlled article falling within the pro-
ısions of the law, concluded as follows:

«It is obvious that bread which is the main derivative of grain cannot be and is not classified as controlled article as from the application of law in relation to grain only but because there is a special provision for that purpose.

I do not agree therefore that the provisions of the law, in respect of grain are enough to give me the right to extend their application mutatis mutandis in the case of macaroni also.

It is undoubtedly a different product which cannot be classified as a controlled article unless it is declared as such pursuant to the provisions of s. 3 of Cap. 68.»

The appellants having felt aggrieved by such decision filed the ɔresent appeal and advanced the following grounds of appeal in ·upport thereof.

1. The learned Judge erred in law and/or misapplied the rele-ɣant provisions of Cap. 68 with regard to the powers of the Cyprus Grain Commission to impose conditions on the exportation of ɡoods constituting controlled articles within the meaning of the ·aid law.

2. The learned Judge misinterpreted the law above mentioned n holding that the Cyprus Grain Commission was not vested with ɔowers to impose conditions on the exportation of goods made of :ontrolled articles.

3. The learned Judge misdirected himself on the facts and the evidence adduced.

The main issues in this appeal on which learned counsel on both ıides elaborated, are whether macaroni falls within the definition ɔf a «controlled article» in the sense of the Grain Control Law, Cap. 68 and whether the interpretation of the law by the learned trial Judge which led to his decision to annul the sub judice decision, is the correct one.

In the course of the hearing of this appeal, counsel for the appellants, raised an additional ground of law that such fee had been continuously imposed for a number of years on exports of macaroni effected by the respondents and the respondents had

accepted the imposition of such fee and had never protested to such course. Furthermore, in the present case, they paid the fee imposed without any reservation. Thus, they have deprived themselves of a legitimate interest to challenge the sub judice decision.

Counsel for the respondents raised no objection to such additional ground which was not raised before the trial Court. Bearing in mind that when this Court is sitting on a revisional appeal from the decision of a Judge exercising jurisdiction in the first instance, examines the whole case de novo and can go into certain matters ex proprio motu and in particular matters touching the existence of a legitimate interest. *(See The Republic v. K.M.C. Motors Ltd.*, Revisional Appeal No. 495, in which judgment was delivered on the 16th September, 1986, not yet reported)*, we allowed counsel to argue this ground.

Before proceeding to examine the main issue in this case, we shall briefly dispose of the new ground raised by counsel for the appellants as to whether the respondents in this appeal had a legitimate interest to challenge the sub judice decision.

It is well established by a series of decisions of this Court adopting in this respect the principles of administrative law as developed in Greece that when a person freely and voluntarily accepts an administrative act or decision, he is deprived of any legitimate interest to challenge such decision, (See, inter alia: *Tomboli v. CYTA* (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149; *Ayoub v. The Republic* (1985) 3 C.L.R. 70; *Christodoulides v. The Republic* (1985) 3 C.L.R. 1979; *Hadji-Constantinou & Others v. Republic* (1984) 3 C.L.R. 319).

As to when an act or decision is free and voluntary, it has been clearly expounded in most of the aforesaid decisions and we need not repeat the principles underlying it.

The imposition of a fee on each occasion that an application for a permit to export macaroni was submitted on previous occasions was by itself a complete administrative act which could be challenged by a recourse. This recourse is not directed against any of such previous acts, but against the particular administrative act embodied in the sub judice decision. The decision of appellant 2 which is contained in the letter of the 26th May, 1980, is an entirely

*Reported in (1986) 3 C.L.R. 1899.

omplete administrative act by itself, independent of any similar revious decisions. When the respondents came to know about ıe intention of appellant 2 to impose such fee, they protested to ıe Minister of Commerce and Industry. Whilst their protest was nder consideration by the Minister, the decision of appellant 2 was taken and communicated to them by the letter of the 26th lay, 1980. The respondents who were pressed to obtain an xport licence for exporting their goods, paid the fee in question, aiting, however, for the decision of the Minister of Commerce nd Industry on their protest. Notwithstanding the above, the espondents within a very short time from the receipt of the letter f the 26th May, 1980, and in fact on the 29th May, 1980, filed ıeir recourse.

Bearing in mind the above, we find ourselves unable to accept ıe submission of counsel for the appellants that in the circumstances of the present case the payment by the respondents of ıe fee in question was an act of an unconditional acceptance of ıe decision emanating from their free consent and volition and ıat by doing so they abandoned any right of challenging the payıent of the said fee.

Having disposed of the above question, we shall now proceed) consider the main issues which pose for consideration in this ppeal.

Counsel for the appellants embarked on the nature of macaroni ıd submitted that macaroni is a product made entirely of emolina which is a product wholly coming from grain, which is a ontrolled article by virtue of the provisions of Cap. 68, after the ain is milled, and as such, falls within the definition of a controld article and is subject to the provisions of section 3 (1). He conıded that the learned trial Judge by making reference to section 9 which refers to bread as a controlled article, and reading such ction in conjunction with section 3, misdirected himself, in that escaped his attention that bread is not made exclusively of grain ıt it is made mainly of flour, a derivative of grain with the addition f other articles alien to grain, such as salt and other substances. e further sought to rely on section 5(1) (f) of the Law which gives wide power to the appellants to regulate anything having to do ith a controlled article. On the strength of such provision, he subitted, extremely wide powers are given to the Grain Commission hich include the power of imposing an obligation to refund part

of the subsidy of grain as this is a mode of controlling the processing and subsequent exportation of the controlled articles. The words «regulate' licence and control», counsel submitted, are not conjunctive and by virtue of this power the Grain Commission can control the «derivatives» of controlled articles by virtue of the words «milling, processing, storage or grinding» in conjunction with the words, «importation, exportation, purchase, sale etc.»

Counsel for the respondents adopted the reasoning of the learned trial Judge and submitted that the definition of grain as a controlled article does not cover the by-products and derivatives of grain and that a specific order is required to extend such provision to such by-products in the same way as in the case of bread under section 19. Counsel finally submitted that the provisions of section 5 (1) (f) are not applicable in this case as macaroni is not in the nature of grain in respect of which powers are given under section 5(1) (f) of the Law to the Grain Commission to control and regulate.

The law applicable in the present case is the Grain Control Law, Cap. 68 and the material sections to which reference has been made are sections 3, 19 and 5(1) (f).

Pursuant to section 3 of Cap. 68:

«3.(1) If at any time it appears to the Governor in Council (now the Council of Ministers) to be necessary or expedient for the purpose of securing a sufficiency of any kind of grain essential to the wellbeing of the community or its equitable distribution or availability at fair prices or that public interest so requires, the Council of Ministers may, by Order (hereinafter referred to as 'The Control Order') declare that kind of grain to be a controlled article and thereupon the provisions of this Law shall have effect in respect of such article.

(2) The Council of Ministers may, if satisfied that the circumstances which led to the making of a Control Order have ceased to exist or that public interest so requires, cancel such Order and upon such cancellation the provisions of this Law shall, subject to section 18, cease to apply to such article.»

Section 19 (1) provides that:

«If it appears to the Council of Ministers that public interest so requires, the Council of Ministers may, in making a Control

Order under subsection (1) of section 3, include bread therein as a controlled article and thereupon the provisions of this Law shall apply mutatis mutandis to bread as if it were a controlled article for the purposes of this Law »

Finally, section 5(1) provides for the functions of the Grain Commission established under the Law Paragraph (f) of sub-section (1) of section 5 provides that the Commission shall have power-

«to regulate, license and control the production, importation, exportation, purchase, sale, distribution, milling, treating, processing, storage or grinding of the controlled article »

The definition of grain is given under section 2 and is as follows

«'grain' includes barley and all kinds of grain used for human consumption or consumption by animal, and further includes flour (as defined in subsection (2) of section 19 of this Law) and bran »

The definition of flour under section 19, sub-section (2) is given-

«'flour' means the products produced by the milling of wheat, and includes all such products except substances separated in the milling as wheat offals, and where such products as aforesaid are mixed with other substances, whether or not produced by the milling of wheat and whether milled with the wheat or subsequently added, the mixture shall be deemed to be flour »

The definition of bread which under section 19(1) is specifically mentioned as an article which may be declared as a controlled article is given under sub-section (2) of section 19 as meaning-

«'bread' means the product produced by baking flour unmixed with any substance other than water, salt and yeast or other leaven »

It is clear from the provisions of section 3 of Cap 68 that such section is an empowering section in case it is considered that «any kind of grain is essential to the «wellbeing of the community» to declare such kind as a controlled article A similar power is given under s 19 to declare «bread», a specific by-product of grain produced by the baking of flour as a controlled article.

By virtue of a control order issued by the Governor in Council on 27th April, 1954 and published in Supplement No.3 of the official Gazette of the Republic of the 29th April, 1954 under Not. 285 cited as «Wheat, Barley and Bread (Control) Order, 1954», wheat and barley were declared to be «controlled articles». It was further declared by the same order that «bread is included as a controlled article for all purposes of the aforesaid law.»

Flour was declared as a controlled article by the Flour Control Order, 1961, issued by the Council of Ministers on the 30th March, 1961 and published in Supplement No.3 of the official Gazette of the Republic of 31st March, 1961, under Not. 93.

Under section 21 of the Grain Control Law, Cap. 68 (as amended by Law 54/62) the Grain Commission may, with the approval of the Governor, make regulations in respect of matters which under the law have to be regulated (section 21) and generally for the better carrying out of the purposes of the law.

The Grain Commission in the exercise of its powers under section 21, made such regulations with the approval of the Governor prior to Independence and of the Council of Ministers after Independence. Such regulations appear in Supplement No.3 of the official Gazette of the Republic of the 23rd December, 1954 under No. 717, 28.7.1955, under No. 451, 27.12.58, under Not. 1143, 31.3.61 under Not. 94.

Such regulations provide for the registration of millers, the conditions for the grant of a permit to a miller, the charges for milling, the operation of bakeries, the production of bread, the control of the production and sale of flour, the control and sale of bread and similar matters.

Reading the provisions of the Grain Control Law, Cap.68 and its amending Law 54/62 and the regulations made thereunder, no room for any doubt is left that the intention of the legislator was to control grain as such and its by-products after grinding and also the disposition of grain and flour. Nowhere in the law or the regulations there exists any provision as to the control of products originating from any of the controlled articles which, by having undergone process of baking or manufacture, are converted into a new product entirely different from the original article such as for example, in the present case, macaroni. Where there was an inten-

tion of the legislator to include specifically in the list of controlled articles any by-product of flour which by having undergone a manufacturing process was converted into a new article, an express provision was made in the law, as in the case of bread «the product produced by baking flour» under section 19(1) of the law.

We have therefore reached the conclusion that the learned trial Judge rightly found that the provisions of the law cannot be treated as extending to macaroni in the same way as they extend to bread and that the provisions under section 3 read in conjunction with section 19 cannot be considered as applying mutatis mutanids to the case of macaroni as well.

The appeal is therefore dismissed but in the circumstances we make no order for costs.

Appeal dismissed with no order as to costs.