1985 May 10

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

KYRIACOS ANTONIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE DISTRICT OFFICER NICOSIA,
2. THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE,

Respondents.

(Case No. 254/74).

Drought striken corn producers—"Entitled cultivators" in the relevant decision of the Council of Ministers—Those whose "net income" from any occupation other than agriculture did not exceed £800.—"Net income"—Defined as not including "expenses reasonably incurred for the purpose of acquiring the income"—Travelling expenses to and from place of applicant's employment an expense reasonably incurred by him for the purpose of acquiring his income —And respondents should have made an allowance for such expenses in ascertaining his net income which they failed to do—Thus basing their finding that he is not an "entitled cultivator" upon his gross income—Sub judice decision annulled.

The Council of Ministers by its decision No. 12.354, dated 24th May, 1973 decided to grant government assistance to drought striken corn producers at the rate of £3.- per donum. This assistance was to be granted ex-gratia because it was impossible in the circumstances, to apply the provisions of the Stricken Producers Provident Fund Laws 1970 to 1973 as due to the general extent of the drought no tax was imposed during the agricultural year

1972/73 under the provisions of the said Law. Under the above decision only "entitled cultivators" were eligible for assistance which term was defined to include only those cultivators whose net income from any occupation or other sources, other than agriculture or farming, together with that of their wife and minor or dependent children did not exceed £800.- or, in the case of unmarried cultivators, £600.-. "Net income" was defined as "income from any occupation or any other source resulting in the year immediately preceding the year of the delivery of the cereals after the deduction of all expenses reasonably incurred for the purpose of acquiring the said income".

The applicant, who was a part time farmer being also employed by a brewing company, applied for assistance but his application was turned down since his income exceeded £800.- It was not in dispute that the applicant's total gross emoluments from his employers in 1972 were £801.040 mils.

Upon a recourse by the applicant against the rejection of his application it was submitted that the applicant's travelling expenses to and from his place of work, although not deductible for income tax purposes should have been deducted from the above amount before ascertaining the net income of the applicant.

Held, that having regard to the definition of "net income" and especially the words "after deduction of all expenses reasonably incurred for the purpose of acquiring the said income"; the travelling expenses to and from the place of applicant's employment is an expense reasonably incurred by the applicant for the purpose of acquiring his said income; that the respondents should, therefore, have made an allowance for such expenses in ascertaining the net income of the applicant which they failed to do, thus basing their finding that the applicant is not an "entitled cultivator" upon his gross income; that though it is not in evidence what is the exact amount of such expenses one can reasonably infer that, no matter by what means he travelled, it should, under any circumstances, be considerably more than £1.040 mils per annum, which is the amount over and above the sum of £800.- which is fixed

as the maximum limit enabling an applicant to be considered as an "entitled cultivator" within the ambit of the decision of the Council of Ministers; and that, accordingly, the sub judice decision must be annulled.

Sub judice decision annulled.

Recourse.

Recourse against the decision of the respondents to strike applicant's name out of the list of drought stricken producers in respect of the agricultural year 1972/73.

N. Zomenis, for the applicant.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant challenges the validity of the decision of the respondents whereby his name was struck off the list of drought stricken producers in respect of the agricultural year 1972/73. The applicant comes from Yerolakkos and was, at the material time, a part time farmer, being also employed by a brewing company. As a farmer he was contributing to the Provident Fund for Striken Producers the sum fixed from time to time.

As it is shown from a form filled in by him (exhibit 13) the applicant cultivated in 1972/73 112 donums of barley at Yerolakkos and 74 donums of same at Ayios Dhometios. Both areas were declared as drought striken areas. The Council of Ministers by its decision No. 12.354, dated 24th May, 1973 (exhibit 1) decided to grant, on the basis of criteria to be agreed upon by the Ministers of Finance and Agriculture and Natural Resources, government assistance to drought stricken corn producers at the rate of £3.- per donum. This assistance was to be granted ex-gratia because, as stated in the decision, it was impossible in the circumstances, to apply the provisions of the Stricken Producers Provident Fund Laws 1970 to 1973 as due to the general extent of the drought no tax was imposed during the agricultural year 1972/73 under the provisions of the said Law. It was further decided that strict criteria should

be imposed so as to limit the total amount of assistance on the one hand and on the other to assist those producers who had agriculture as their main occupation.

On the 11th June, 1973, a submission was made to the Council of Ministers defining the criteria upon which assistance was to be granted (exhibit 12). Under such criteria only "entitled cultivators" were eligible for assistance which term was defined to include only those cultivators whose net income from any occupation or other sources, other than agriculture or farming, together with that of their wife and minor or dependent children did not exceed £800.- or, in the case of unmarried cultivators, £600.-

The Council of Ministers considered the above submission on the 14th June, 1973, and by its decision No. 12.408 (exhibit 2) adopted it and fixed the maximum income of "entitled cultivators" as set out in the submission.

The applicant was, as a result, informed by letters of the District Officer dated 12th November, 1973, that he was not an "entitled cultivator" since his income exceeded £800.- and his name was, therefore, deleted from the list of persons to whom assistance was to be granted (exhibits 3 and 4).

The applicant filed objections with the Director of the Department of Agriculture (exhibits 5 and 6) stating, inter alia, that his income from other sources was only £700.-. The Director of the Department of Agriculture communicated his decision to the applicant by letter dated the 18th March, 1974 (exhibit 7) stating that:

> "..... the Committee which examined your objection having taken into consideration the material submitted by you and the decisions of the Council of Ministers Nos. 12.354 dated 24.5.1973 and 12.408 dated 14.6.1973 was unable to approve it."

As a result the applicant filed the present recourse.

Counsel for applicant argued that the applicant is a "producer" within the meaning of s. 2 of the Stricken Producers Provident Fund Law, 1970 (Law No. 19/70) and as such made compulsory contributions to the fund set

up thereunder and is, therefore, entitled to assistance from the fund. He also submitted that the restrictions imposed by the decision of the Council of Ministers (exhibit 2) regarding income from other sources are illegal and arbitrary, the criterion under the Law being whether one is a "producer" and nothing else and that the applicant was entitled under the provisions of the Law to assistance from the Fund irrespective of any other income of his. Counsel also contended that the fixing of the income of the applicant from other sources at £801.- was wrong and arbitrary, and that this sum was his gross income before any deductions and not the "net income" as defined in the decision of the Council of Ministers.

Counsel for the respondents argued that the payments were not made under the provisions of Law 19/70 but were ex-gratia payments, as mentioned in the decision of the Council of Ministers (exhibit 1) and the Law could not apply since no payments into the Fund were made for the year in question (1972). As to the criteria laid down by exhibit 2, counsel argued that these were not based on any provisions of any Law and, therefore, it cannot be argued that they contravene the provisions of any Law, but that in any event they were fair and reasonable.

As the grant of assistance to the producers in the present case was not made under the provisions of any Law as stated by counsel for the respondents and as it appears from the exhibits filed but was made under the scheme approved by the Council of Ministers as mentioned in exhibit 1, I will consider this case on the assumption that the Council of Ministers was entitled to decide not to apply the Law or to depart from its provisions, even though I am inclined to the contrary view, since this recourse is in my view, bound to succeed even on the basis of the decisions of the Council of Ministers.

It is not in dispute that the reason that the applicant's name was deleted from the list of "entitled cultivators" is that his income from other sources namely from his employment with the brewing company was more than £800.- i.e. it was £801.040 mils. In the decision of the Council of Ministers (exhibit 2) it is stated under paragraph (a) that "the net income of an 'Entitled Cultivator' (sub-paragraph 2(b)

of the Submission) together with the income of his wife and/or minor or dependent children from work other than farming, etc. does not exceed £800.- and in the case of an 'Entitled Cultivator' without a wife or dependent persons does not exceed £600.-"

The term "net income" is also defined in the submission to the Council of Ministers (exhibit 12), on the basis of which the Council took its decision, as follows:

> "(c) 'Net income' means income from any occupation or any other source resulting in the year immediately preceding the year of the delivery of the cereals after the deduction of all expenses reasonably incurred for the purpose of acquiring the said income."

It is clear from the above that it is the net income of the applicant and not his gross income that should be taken into account in deciding whether he qualifies for the assistance or not.

It also appears from the green form (form I. R. 63) which is entitled "Certificate of Employee's Emoluments" which is filled in and signed by applicant's employers for income tax purposes and which is attached to exhibit 11B, the income tax form filled by the applicant, that the applicant's total gross emoluments from his employers in 1972 were £801.040 mils i.e. they exceeded by £1.040 mils the maximum fixed by the Council of Ministers for qualification as an "entitled cultivator".

It is also evident that it is upon this form that the respondents ultimately relied in fixing his income from his employment at £801.040 mils.

Counsel for the applicant submitted that the applicant's travelling expenses to and from his place of work, although not deductible for income tax purposes, should have been deducted from the above amount before ascertaining the net income of the applicant.

Having regard to the definition of "net income" in exhibit 12 and especially the words "after deduction of all expenses reasonably incurred for the purpose of acquiring the said income", I am satisfied that the travelling expenses

to and from the place of applicant's employment is an expense reasonably incurred by the applicant for the purpose of acquiring his said income. The respondents should, therefore, have made an allowance for such expenses in ascertaining the net income of the applicant which they failed to do, thus basing their finding that the applicant is not an "entitled cultivator" upon his gross income. It is not in evidence what is the exact amount of such expenses but one can reasonably infer that, no matter by what means he travelled, it should, under any circumstances, be considerably more than £1.040 mils per annum which is the amount over and above the sum of £800.- which is fixed as the maximum limit enabling an applicant to be considered as an "entitled cultivator" within the ambit of the decisions of the Council of Ministers. And that, had the respondents made a deduction of a reasonable sum for such expenses, his net income would, inevitably, come to less than £800.

For this reason this recourse must succeed and the sub judice decision be annulled.

Sub judice decision annulled.
No order as to costs.